A/55/33

United Nations

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

General Assembly
Official Records
Fifty-fifth session
Supplement No. 33 (A/55/33)

General Assembly
Official Records
Fifty-fifth session
Supplement No. 33 (A/55/33)

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

United Nations • New York, 2000

Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 0255-1276

[Original: Arabic/English/Russian]
[22 May 2000]

Contents

Chapter		*Paragraphs*	*Page*
I.	Introduction	1–14	1
II.	Recommendations of the Special Committee	15	2
III.	Maintenance of international peace and security	16–125	2
	A. Implementation of Charter provisions related to assistance to third States affected by sanctions	16–49	2
	B. Consideration of the revised working paper submitted by the Russian Federation entitled "Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation"	50–97	6
	C. Consideration of the working paper submitted by the Russian Federation entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations"	98–111	16
	D. Consideration of the working papers submitted by Cuba at the 1997 and 1998 sessions of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness"	112–118	19
	E. Consideration of the revised proposal presented by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security	119	20
	F. Consideration of the working paper submitted by the Russian Federation and Belarus	120–125	20
IV.	Peaceful settlement of disputes		
	Consideration of the revised proposal submitted by Sierra Leone entitled "Establishment of a dispute prevention and early settlement service"	126–155	21
V.	Proposals concerning the Trusteeship Council	156–160	27
VI.	*Repertory of Practice of United Nations Organs* and *Repertoire of the Practice of the Security Council*	161	28

VII. Working methods of the Special Committee, identification of new subjects, assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization 162–198 29

A. Working methods of the Special Committee 162–195 29

B. Identification of new subjects 196–197 34

C. Assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization 198 34

Chapter I
Introduction

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 54/106 of 9 December 1999 and met at United Nations Headquarters from 10 to 20 April 2000.

2. In accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995, the Special Committee was open to all States Members of the United Nations.

3. On behalf of the Secretary-General, Hans Corell, Under-Secretary-General for Legal Affairs, the Legal Counsel, opened the session.

4. The Director of the Codification Division of the Office of Legal Affairs, Václav Mikulka, acted as Secretary of the Committee, assisted by the Principal Legal Officer, Sachiko Kuwabara-Yamamoto (Deputy Secretary).

5. At its 232nd meeting, on 10 April 2000, the Special Committee, bearing in mind the terms of the agreement regarding the election of the officers reached at its session in 1981,[1] and taking into account the results of the pre-session consultations among its Member States, elected its Bureau, as follows:

Chairman:

Saeid Mirzaee-Yengejeh (Islamic Republic of Iran)

Vice-Chairpersons:

Georg Witschel (Germany)
Roberto Lavalle-Valdés (Guatemala)
Juliet Semambo Kalema (Uganda)

Rapporteur:

Ioana Gabriela Stancu (Romania)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group.

7. Also at its 232nd meeting, the Special Committee adopted the following agenda (A/AC.182/L.106):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the questions mentioned in General Assembly resolution 54/106 of 9 December 1999, in accordance with the mandate of the Special Committee as set out in that resolution.
6. Adoption of the report.

8. At its 233rd meeting, on 10 April 2000, the Special Committee established a Working Group of the Whole and agreed on the following organization of work: proposals relating to the maintenance of international peace and security (eight meetings); proposals regarding the peaceful settlement of disputes between States (two meetings); proposals concerning the Trusteeship Council (one meeting); proposals on the ways and means of improving working methods of the Committee (two meetings); the question of the identification of new subjects (one meeting); and the consideration and adoption of the report (three meetings). The distribution of meetings would be applied with the necessary degree of flexibility, taking into account the progress achieved in the consideration of the items.

9. General statements touching upon all items or upon several of them were made prior to the consideration of each of the specific items in the Working Group. The substance of those general statements is reflected in the relevant sections of the present report.

10. With regard to the question of the maintenance of international peace and security, the Special Committee had before it the report of the Secretary-General entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions" (A/54/383 and Add.1); a revised working paper submitted by the Russian Federation entitled "Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100/Rev.1; see paras. 50-97 below); a working paper submitted by the Russian Federation at the 1998 session of the Committee entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100);[2] an informal working paper submitted by the Russian Federation at the 1997 session of the Committee, entitled "Some views on the

importance of and urgent need for the elaboration of a draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts" (A/AC.182/L.89/Add.1);[3] a working paper also submitted by the Russian Federation at the 1998 session of the Committee, entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" (A/AC.182/L.89/Add.2 and Corr.1);[4] a working paper submitted by the delegation of Cuba at the 1998 session of the Committee entitled "Strengthening the role of the Organization and enhancing its effectiveness" (A/AC.182/L.93/Add.1);[5] a revised proposal also submitted at the 1998 session by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security (A/AC.182/L.99);[6] and a working paper submitted at the 1999 session of the Committee by the Russian Federation and Belarus containing a draft resolution of the General Assembly and a revision thereof (A/AC.182/L.104/Rev.1).[7]

11. With regard to the topic "Peaceful settlement of disputes between States", the Special Committee had before it a revised proposal entitled "Establishment of a dispute prevention and early settlement service" (A/AC.182/L.96), submitted by Sierra Leone at the Committee's 1997 session and orally revised at the 1998 session;[8] and an informal paper entitled "Elements for a resolution on dispute prevention and settlement", submitted by the United Kingdom of Great Britain and Northern Ireland at the 1999 session of the Committee.[9]

12. With regard to the topic "Working methods of the Special Committee", the Special Committee had before it a working paper submitted by the delegation of Japan entitled "Ways and means of improving the working methods and enhancing the efficiency of the Special Committee" (A/AC.182/L.107; see paras. 163-193 below) and a proposal submitted also by the delegation of Japan entitled "Proposal submitted by Japan on ways and means of improving the working methods and enhancing the efficiency of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization" (A/AC.182/L.108; see para. 194 below).

13. The Special Committee also had before it an informal paper prepared by the Secretariat entitled "Mechanisms established by the General Assembly in the context of dispute prevention and settlement" (A/AC.182/2000/INF/2).

14. At its 234th and 235th meetings, on 19 April, the Special Committee adopted the report of its 2000 session.

Chapter II
Recommendations of the Special Committee

15. The Special Committee submits to the General Assembly, as regards the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, the recommendations contained in paragraphs 48 and 49 below.

Chapter III
Maintenance of international peace and security

A. Implementation of Charter provisions related to assistance to third States affected by sanctions

16. During the general debate held at the 232nd meeting of the Special Committee, on 10 April 2000, delegations stressed that the topic should remain a priority item on the agenda of the Special Committee.

17. Some delegations recognized the continuing efforts undertaken by the Security Council to, *inter alia*, enhance the vigilance of the application of sanctions, evaluate the humanitarian impact of sanctions on vulnerable groups within the target States, as well as their impact on third States, streamline the working procedures of the sanctions committees and facilitate access to them by third States affected by the implementation of sanctions. In this connection, attention was drawn to the note by the President of the Security Council of 29 January 1999 (S/1999/92) and to the recent establishment by the Security Council of an informal working group with a mandate to consider issues related to improving the effectiveness of sanctions.

18. Some delegations stressed that sanctions should be imposed only as an exceptional measure once all the other peaceful methods for settling disputes had been exhausted. A prior assessment of the potential impact of sanctions and assessment of the impact also during their implementation, both on the target State and on third States, was also deemed necessary.

19. Some delegations expressed their support for targeted sanctions and, in this regard, appreciation was voiced for the expert seminar on targeted financial sanctions, held in Interlaken, Switzerland, in March 1999, and the seminar on "Smart sanctions, the next step: arms embargoes and travel sanctions", held at Bonn, Germany, in November 1999.

20. Nonetheless, the point was also made that it was still necessary to adopt effective measures in order to fully implement Article 50 of the Charter. In this connection, it was stated that practical and timely assistance to third States affected by the application of sanctions would further contribute to an effective and comprehensive approach by the international community to sanctions imposed by the Security Council. The view was expressed that it was necessary to establish an appropriate and permanent mechanism that could be activated automatically to address the issue of assistance to third States affected by sanctions.

21. Delegations spoke in favour of continuing their consideration of the report of the Secretary-General on the implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions (A/53/312), including the valuable recommendations and main findings of the ad hoc expert group meeting, held in New York from 24 to 28 June 1998, concerning the development of a possible methodology for assessing the consequences actually incurred by third States as a result of preventive or enforcement measures and the exploration of innovative and practical measures of international assistance that could be provided to third States.

22. Delegations welcomed the recent report of the Secretary-General on the same subject (A/54/383 and Add.1) containing the views of States, international financial institutions, organizations of the United Nations system and other relevant international organizations regarding the report of the ad hoc expert group. Hope was expressed that these comments would assist the Secretary-General in elaborating and presenting to the General Assembly his views on the deliberations, main findings and recommendations of the ad hoc expert group, in accordance with paragraph 5 of Assembly resolution 54/107 of 9 December 1999.

23. A suggestion was made that, after a thorough review of conclusions and proposals of the ad hoc expert group (A/53/312, paras. 49-57), the Special Committee could formulate recommendations to the General Assembly on those proposals. It was stated that the recommendations of the ad hoc expert group, along with the views presented by States and institutions contained in the report of the Secretary-General (A/54/383 and Add.1), constituted a sufficient basis for reaching an agreement on the practical implementation of Article 50 of the Charter.

24. Some delegations, however, were of the view that, prior to embarking on a substantive discussion of the detailed suggestions of the ad hoc expert group, the Special Committee could benefit from the views to be presented by the Secretary-General to the General Assembly, in particular as regards the political, financial and administrative feasibility of the suggestions.

25. Some delegations were of the opinion that the General Assembly, the Economic and Social Council and the Committee for Programme and Coordination, as well as the international financial institutions and other international organizations, including regional organizations, as well as United Nations funds and programmes, had a vital role to play with respect to addressing the special economic problems of third States affected by the application of sanctions.

26. With regard to the development of a possible methodology, it was pointed out that several issues had to be clarified, such as the rules that should be applied to States indirectly affected by sanctions; the scale for identifying the amount of assistance to be provided to such States; the provision of assistance, taking into account the level of a State's economic development and the nature of its relations with the target State.

27. In this context, it was also noted that the elaboration of procedures for the identification and proper categorization of various effects of sanctions, the review of methods applicable in estimating the incurred losses and costs and, subsequently, the design of feasible measures of relief merited careful examination.

28. As regards the exploration of innovative and practical measures of international assistance to the affected third States, support was expressed for the suggestion of the ad hoc expert group to apply, for the purpose of mitigating adverse effects of sanctions, funding procedures similar to those adopted for peacekeeping operations.

29. A point was made that assistance to third States should be supplemented by non-financial measures such as special trade preferences, tariff adjustments, quota allocations, special commodity purchase agreements, the lowering of tariffs, preferential treatment for suppliers, encouragement of the participation of companies from third States in international efforts for post-conflict rehabilitation and development, attracting foreign direct investments in their economies and giving priority to the contractors of the affected third States for the humanitarian investments in the target State.

30. At the 9th to 11th meetings of the Working Group, on 14, 17 and 18 April, some delegations reiterated their views that the practical proposals put forward by the ad hoc expert group were positive and that the recommendations made were generally acceptable.

31. Particular attention was drawn to the following proposals by the ad hoc expert group, which had obtained a large measure of support: to draw up a tentative list of potential effects of sanctions on third States; to prepare for the Security Council an advanced assessment of the potential impact of sanctions on the targeted State and, in particular, on third States; to entrust the Secretariat with the task of monitoring the effects of sanctions, as well as providing technical assistance to third States in preparing the explanatory materials to be attached to their requests for consultations with the Security Council; and to appoint, in the most severe cases, a special representative of the Secretary-General to undertake a full assessment of the consequences of sanctions incurred by affected States. In this connection, references were made to previous reports of the Secretary-General, as well as resolutions of the General Assembly and the note of the President of the Security Council (S/1999/92) containing the elements of the above-mentioned recommendations of the ad hoc expert group.

32. Support was expressed by some delegations for a general discussion of the issues raised by the ad hoc expert group. It was felt that General Assembly resolution 54/107 constituted a sufficient legal basis for such an exercise, irrespective of what might be decided in other organs of the Organization, which were subject to different mandates. Furthermore, it was stated that some of the views of the Secretary-General on the topic of sanctions were already in the public domain[10] and that the views to be submitted by the Secretary-General to the Assembly would not be binding upon delegations. It was stated that the working group on sanctions established by the Security Council could also benefit from the opinions expressed by delegations in the Special Committee.

33. Concern was expressed that yet another round of general discussion on the agenda item could result in repetition. Therefore, a proposal was put forward to commence consideration, on a paragraph-by-paragraph basis, of the findings of the ad hoc expert group. Such an exercise would be preliminary, non-binding, of an informal nature and not precluded by the provisions of General Assembly resolution 54/106 of 9 December 1999. Those delegations favouring this approach indicated that such a preliminary exchange of views on the recommendations of the ad hoc expert group would shed light on which recommendations commanded support from Member States. Since the Special Committee had been instructed by the General Assembly to deal with the subject matter on a priority basis, such action would also be more in line with the mandate of the Committee.

34. Other delegations, however, were of the view that the Special Committee should not proceed with a paragraph-by-paragraph discussion of the recommendations of the ad hoc expert group, even in an informal context, in the absence of a filtering of the recommendations. Nonetheless, it was noted that delegations were still free to present their views on any of the recommendations referred to.

35. Some delegations reiterated their position that the Special Committee needed to have the views of the Secretary-General prior to proceeding with a more substantive discussion on assistance to third States affected by sanctions. These delegations expressed the opinion that the views to be submitted by the Secretary-General to the General Assembly were crucial to considering the different issues raised by sanctions, including those related to Article 50 of the Charter. Furthermore, it was of fundamental importance to see what direction the Security Council

itself would take, given the fact that it had just established a working group on sanctions that was to submit a report by the end of November 2000. Consequently, these delegations deemed that it would be detrimental for the Special Committee to begin discussion of the recommendations of the ad hoc expert group without having all the necessary substantive elements.

36. Some delegations highlighted the importance that sanctions played in the maintenance of international peace and security. The point was made that, in cases where the imposition of sanctions had not led to modification of the behaviour of the target State, there was no longer justification to maintain them.

37. Support was expressed by some delegations for resorting to sanctions only as a last resort in cases under Chapter VII of the Charter. In this connection, particular importance was attached to first exhausting the peaceful methods of settling disputes. It was deemed that once the Security Council decided to proceed with sanctions, they should be imposed in accordance with established criteria and a specific time frame. The point was made that this would impede the Security Council from employing sanctions as a political tool. Furthermore, it was stated that the target State should have access to the Council prior to the imposition of sanctions and whenever a review of said sanctions took place. Third States affected by sanctions should also be allowed to consult with the Council. In this regard, a call was made for the establishment by the Security Council of a permanent mechanism for consultation with third States confronting economic problems resulting from the preventive measures adopted by the Council.

38. The view was expressed that, in many instances, sanctions caused severe damage to the population of a third State with links to the target State and that the relevant provisions of the Charter were never intended to harm the interests of third States. It was also noted that sanctions should not affect a State's right to development and that they should also take into account the impact upon migrant workers in third States. Some delegations also called for due consideration to be given to the need to provide the civilian population with humanitarian supplies.

39. The point was made that the United Nations system, international financial institutions and regional and international organizations, as well as Member States, all had a role to play in alleviating the burden borne by third States affected by sanctions. It was noted that the need for credible means to implement Article 50 of the Charter flowed from the obligations which States had accepted. Notwithstanding those obligations, neighbouring countries usually bore a disproportionate burden while carrying out their duties on behalf of the international community.

40. Some delegations stressed the importance of examining the impact of sanctions on the target State, since the detrimental effects sanctions inflicted upon third States could not be separated from the effect they produced upon the former. However, the point was also made that the mandate of the Special Committee was limited to considering the issue of assistance to third States affected by sanctions and thus did not include the examination of the effects of sanctions upon the target States.

41. Some States welcomed the initiatives that dealt with the imposition of targeted sanctions directed at imposing limitations on the financial transactions of certain individuals or groups, as well as restricting the movement of their family members. In this connection, it was stated that further studies were warranted to determine why in some cases targeted sanctions had proven effective and why in others the desired results had not been attained.

42. The point was made that, in assessing the impact of sanctions, it was vital to analyse both the direct and the indirect effects. Examples of the former are the problems posed by the loss of trade and the breakdowns in transportation networks, while the indirect effects include the failure to collect taxes and custom duties, the decline in employment and living standards, along with the ensuing need to augment resources for social services.

43. It was also suggested that among the measures which could be implemented to relieve the detrimental effect of sanctions upon third States was to channel assistance to those sectors of the third State's economy that were deeply affected by the sanctions. In this regard, attention was called to involve the United Nations, as well as the regional economic commissions and the international financial institutions.

44. Additional measures suggested to alleviate the detrimental effect of sanctions upon third States included an early assessment of the effects of sanctions, including on-site visits and consultations

between the Security Council sanctions committees and the third State; allowing for exceptions on some items of vital importance to third States; reducing the effects upon the civilian populations of third States; dispatching a special representative of the Secretary-General to undertake a full assessment of the consequences of sanctions upon third States; and dispatching a fact-finding mission to the third State.

45. As regards the suggestion to appoint a special representative of the Secretary-General and to dispatch a fact-finding mission to carry out impact assessments, it was noted that care was required since it was necessary to think about the mandate to be given and the financial implications that might arise, matters on which the views of the Secretary-General himself would be most helpful. In this regard, the point was made that both the appointment of a special representative and of a fact-finding mission constituted practice in the Organization, as evidenced by past reports of the Secretary-General on the issue of sanctions.

46. The point was made that it was necessary to respect the delicate balance between the major organs of the United Nations. While respecting the competence of the Security Council to impose sanctions, the view was expressed that the General Assembly and its related organs needed to revise the guidelines and principles of the Charter in relation to coercive measures. Such a task could be entrusted to the Special Committee, which had the appropriate expertise and transparency. In this regard, it was noted that the latest reports of the sanctions committees of the Security Council did not take into consideration an assessment of the impact of sanctions or their effectiveness or how the role of the United Nation is enhanced. A call was made for the sanctions committees to hold open recorded meetings and to include information such as that referred to above in their reports.

47. The point was also made that the Special Committee and the Sixth Committee should be able to convey the results of their respective discussions on sanctions to the recently established Security Council working group.

48. The Special Committee welcomed once again the report of the Secretary-General summarizing the deliberations and main findings of the ad hoc expert group convened pursuant to General Assembly resolution 52/162 of 15 December 1997 (A/53/312) and recommended that at its fifty-fifth session the Assembly should continue to consider, in an appropriate substantive manner and framework, the results of the ad hoc expert group meeting, taking into account the relevant debate in the Committee at its 2000 session, the views of States, the organizations of the United Nations system, the international financial institutions and other relevant international organizations, as contained in the report of the Secretary-General (A/54/383 and Add.1), as well as the views of the Secretary-General regarding the deliberations and main findings of the ad hoc expert group to be submitted pursuant to Assembly resolution 54/107, and the relevant information to be submitted by the Secretary-General on the follow-up to the note of the President of the Security Council (S/1999/92), and to address further the question of the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions under Chapter VII and the implementation of General Assembly resolutions 50/51, 51/208, 52/162, 53/107 and 54/107, taking into account all reports of the Secretary-General on this subject and the text on the question of sanctions imposed by the United Nations contained in annex II to General Assembly resolution 51/242, as well as the proposals presented and views expressed by the Special Committee.

49. The Special Committee further encouraged the Secretary-General to present, in due time for consideration of the Sixth Committee, his views on the deliberations and main findings of the ad hoc expert group on the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions, as provided in General Assembly resolution 54/107.

B. Consideration of the revised working paper submitted by the Russian Federation entitled "Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation"

50. During the general debate held at the 232nd meeting of the Special Committee, reference was made to concerns relating to the humanitarian impact of

sanctions. The view was expressed that the Special Committee should consider the possibility of establishing a mechanism to study the potential impact of sanctions prior to their implementation, with a view both to obtaining their desired objectives faster and to minimizing any negative humanitarian effects. Support was further expressed by some delegations for the working paper proposed by the Russian Federation (A/AC.182/L.100),[11] which was described as constituting a useful basis for further consideration of the question of sanctions. The hope was also expressed by them that the working paper would continue to be considered at the current session, with a view to obtaining positive results. The sponsor delegation also took the opportunity to express its satisfaction with the work undertaken at the previous session of the Special Committee and noted that the eventual product would be of undeniable assistance to the Security Council.

51. At the 233rd meeting of the Special Committee, support was again expressed for the proposal. However, a further view was expressed that a paragraph-by-paragraph consideration of the working paper would be subject to the same concerns raised in paragraphs 36 and 37 of the report of the Special Committee on the work of its 1999 session[12] and should be undertaken on the understanding that it was only a preliminary discussion of the working paper, and that silence should not be taken to signify agreement.

52. The proposal was considered at the 1st to 4th meetings of the Working Group, held from 10 to 12 April 2000. At the 1st meeting, the sponsor delegation announced its submission of a revised working paper entitled "Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100/Rev.1), which read as follows:

"I

"The basic conditions and standard criteria for the introduction and application of sanctions include the following elements:

"1. The application of sanctions is an extreme measure and is permitted only after all other peaceful means of settling the dispute or conflict and of maintaining or restoring international peace and security, including the provisional measures provided for in Article 40 of the Charter of the United Nations, have been exhausted and only when the Security Council has determined the existence of a threat to peace, a breach of the peace or an act of aggression.

"2. Sanctions must be introduced in strict conformity with the provisions of the Charter of the United Nations and the rules of international law and justice, pursue clearly defined purposes, have a time-frame, be subject to regular review, taking into account the views of the State which is the object of sanctions, where appropriate, and provide for clearly stipulated conditions for lifting them, and the lifting of them must not be linked to the situation in neighbouring countries.

"3. Before the introduction of sanctions, the State or party which is the object of Security Council sanctions must, as a rule, be given unambiguous notice.

"4. The use of sanctions for the purpose of overthrowing or changing the lawful regime or existing political order in the country which is the object of sanctions is not permissible.

"5. The purpose of sanctions is to modify the behaviour of the party which is the object of sanctions and which is threatening international peace and security, not to punish or otherwise exact retribution.

"6. The creation of a situation in which the consequences of the introduction of sanctions would inflict considerable material and financial harm on third States is not permissible.

"7. The imposition on a State which is the object of sanctions of additional conditions for cessation or suspension of sanctions is not permissible except as a result of newly discovered circumstances and except where explicitly provided for in Security Council decisions.

"8. Objective assessment of the short-term and long-term socio-economic and humanitarian consequences of sanctions is necessary both at the stage of their preparation and in the course of their implementation.

"9. The Secretariat must provide the Security Council and the sanctions committees, at their request, with an assessment of the humanitarian and economic impact of sanctions.

"10. Efforts should be made to allow the population of the State which is the object of sanctions to gain access to appropriate resources and procedures for financing humanitarian imports.

"11. Following the introduction of sanctions, the Secretariat should be given the responsibility of monitoring their effects so that the Security Council and its sanctions committees may receive timely information and early estimates of the impact of the sanctions regime on third countries which have suffered or may suffer seriously as a result of their implementation, and so that the Security Council, while maintaining the effectiveness of the sanctions regime, may make the necessary corrections or partial changes to its implementation or to the regime itself in order to mitigate the negative impact of the sanctions on third countries.

"II

"In considering the question of sanctions, special attention should be paid to the 'humanitarian limits' of sanctions. Their main components could be the following provisions:

"1. When the Security Council considers issues relating to sanctions, account must be taken of humanitarian considerations, which are equally pressing in time of peace and in time of armed conflict.

"2. Decisions on sanctions must not create situations in which fundamental human rights not subject to suspension even in an emergency situation would be violated, above all the right to life, the right to freedom from hunger, the right to prevent and cure epidemic and other diseases and combat them, and the right to create conditions which would ensure medical services for all and care in the event of illness.

"3. The adoption of decisions and the implementation of sanctions should not create situations which would cause unnecessary suffering to the civilian population, especially its most vulnerable sectors.

"4. Sanctions may not be open-ended and should be subject to periodic adjustment, taking into account the humanitarian situation and depending on the fulfilment by the State which is the object of sanctions of the requirements of the Security Council.

"5. The temporary suspension of sanctions is desirable in emergency situations and cases of *force majeure* (Natural disasters, threat of famine, mass disturbances resulting in the disorganization of the country's Government) in order to prevent a humanitarian disaster.

"6. Impermissibility of measures likely to cause a serious deterioration in the situation of the civil population and breakdown of the infrastructure of the State which is the object of sanctions.

"7. Ensuring unimpeded and non-discriminatory access of the population of countries which are the object of sanctions to humanitarian assistance.

"8. Consideration of the views of international humanitarian organizations of generally recognized authority in drawing up and implementing sanctions regimes. Exclusion of international humanitarian organizations from the effect of sanctions limitations with a view to facilitating their work in countries which are the object of sanctions.

"9. Utmost simplification of the regime established for delivery of humanitarian supplies required for the sustenance of the population, and exclusion of medical supplies and staple food items from the scope of the sanctions regime. Basic or standard medical and agricultural equipment and basic or standard educational items should also be exempted.

"10. Strict observance of the principles of impartiality and the impermissibility of any form of discrimination in the provision of humanitarian and medical assistance and other forms of humanitarian support for all sectors and groups of the population.

"11. All information on the humanitarian consequences of the introduction and implementation of sanctions, including those which have a bearing on the basic living conditions of the civilian population of the State which is the object of sanctions and on its socio-economic development, must be objective and

must be as transparent as possible, and must be taken into account by the Security Council and its sanctions committees, with a view to the modification of the sanctions regime and, ultimately, to the full or partial lifting of the sanctions.

"12. The State which is the object of sanctions should exert all possible efforts to facilitate the equitable and unimpeded distribution of humanitarian assistance.

"13. It is of paramount importance, in introducing and implementing sanctions, to observe the humanitarian limits of sanctions to ensure that they will contribute to the maintenance of international peace and security and that they will be legitimate from the standpoint of the Charter of the United Nations and the rules of international law and justice."

53. In introducing the working paper, the sponsor delegation referred generally to the timeliness of the Special Committee's consideration of the question of sanctions. It pointed to the fact that the issue was being considered in a number of forums, both within and outside the Organization. It was also stated that the question of sanctions affected all States without exception, and that the Special Committee could consider preparing a document for submission to the forthcoming Millennium Assembly of the United Nations.

54. The introductory remarks of the sponsor delegation on section I of the working paper are reflected under the respective paragraph headings below. With regard to section II, it was observed that no change had been made to the introductory *chapeau*. As to paragraph 1, the original reference to "which are even more pressing in time of peace than in time of war" had been reformulated to read "which are equally pressing in time of peace and in time of armed conflict". Paragraph 2 remained substantially the same. Paragraph 3 had been reformulated. In particular, the reference to "excessive suffering" had been changed to "unnecessary suffering". Paragraph 4 had also been reformulated at the suggestion of some delegations to include the limitation on "open-ended" sanctions. Paragraph 5 remained substantially the same with the exception of the inclusion of a non-exhaustive list of examples of *force majeure* in parentheses. Besides a reversal in the order of previous paragraphs 6 and 7, their contents remained the same. Previous paragraphs 8 and 9 were merged, with previous paragraph 9 now reflected as a second sentence in paragraph 8. Paragraph 9 now contained the contents of previous paragraph 10, with the addition of a new sentence to cover the exemption of medical and agricultural equipment and educational items. Paragraph 10 tracked the language of previous paragraph 11. Paragraphs 11 to 13 were new and had been included in response to proposals made in the Working Group at the previous session of the Special Committee.

55. The Working Group subsequently discussed the revised working paper, on a paragraph-by-paragraph basis, but was only able to consider section I, owing to a lack of time. On commencing the consideration of the working paper, several delegations reiterated their previous reservations, reflected, *inter alia*, in the above-mentioned paragraphs in the 1999 report. They expressed the view that they were willing to participate in the discussion on the same understanding, i.e., that the discussion was preliminary in nature, and that, as had been the case the previous year, silence should not be construed as agreement. In addition, the view was expressed that it was not clear that the Special Committee was the appropriate forum for considering the issue in question. Doubts were also expressed regarding the propriety of the General Assembly instructing the Security Council on how it should implement its sanctions regimes. A question was raised as to the timing of the proposal in the light of the current work on, *inter alia*, targeted sanctions being undertaken in other bodies within the United Nations, such as the soon to be established informal working group of the Security Council which would consider issues related to improving the effectiveness of United Nations sanctions, and outside the Organization. Further reference was made to the expert seminar held in Interlaken, Switzerland, in March 1999, on targeted financial sanctions, and the first expert seminar on the topic of "Smart sanctions, the next step: arms embargoes and travel sanctions", held in Bonn, Germany, in November 1999. In that regard, the view was expressed that the proposal was out of step with current developments in the Organization concerning sanctions,[13] especially with regard to the emerging recognition of the importance of "targeted" sanctions. It was further pointed out that the Secretary-General, in his report to the Millennium Assembly of the United Nations, had described sanctions as offering the Security Council "an important instrument to enforce

its decisions".[14] In that regard, the concern was expressed that the working paper would undermine the ability of the Council to utilize sanctions to that end. Furthermore, it was maintained that the Security Council was the more appropriate organ to take the lead on the matter.

56. Conversely, some delegations were of the view that the proposal was timely, that the Special Committee was the appropriate forum for considering the matter and that the possibility of duplication of work with other bodies was not of serious concern, given the fact that such duplication was a common feature of the work of the Organization. The point was made that the seriousness of the topic required that it be considered by all bodies of the United Nations. Furthermore, it was disputed whether the proposal would actually impede the work of the Security Council.

57. The sponsor delegation reiterated its view that the General Assembly, and in particular the Special Committee, did enjoy the competency to consider the matter, and referred to Article 11 of the Charter of the United Nations in support. Reference was also made to the competency of the General Assembly, under Article 13, to make recommendations for the purpose of encouraging the progressive development of international law and its codification, and examples of other legal texts developed by the Assembly, including the Declaration on Friendly Relations,[15] were cited. The sponsor delegation also expressed its willingness to include references in the working paper to current developments elsewhere in the Organization, for example, in regard to the Security Council's resort to "targeted sanctions". The opinion was also expressed in the Working Group that Article 10 of the Charter provided a further basis for the Special Committee's consideration of the topic.

58. As to the working paper itself, concern was expressed in the Working Group regarding the use of casual formulations, which did not adequately reflect the language of the Charter of the United Nations. Criticism was also expressed regarding the rigid and categorical terms in which many of the provisions were formulated. It was noted that such formulation could unnecessarily impede the ability of the Security Council to take action under Chapter VII. Reference was made in that regard to the formulation of the title as well. A general preference was expressed for aligning the text with the consensus formulation of similar provisions contained in the resolution adopted by the General Assembly in 1997 on the "Supplement to an Agenda for Peace" (General Assembly resolution 51/242, annex II). A further point was made that the proposed text could impinge on the accepted authority of the Security Council to interpret those provisions of the Charter applicable to it on its own.

59. Regarding the form of the final text, the view was expressed that it could be formulated in the form of a set of recommendations or practical suggestions for the Security Council. It was, however, pointed out that any such recommendations or suggestions could not be binding on the Security Council. It was also proposed that the final text should be accompanied by a preamble clarifying the nature of the text and its relationship with the work of the Security Council. At the same time, it was pointed out that since the Security Council was currently considering the matter itself, any such recommendations should be finalized soon in order to allow the Council to benefit from them.

Paragraph 1

60. The sponsor delegation, in introducing paragraph 1, pointed to some of the changes made to the previous text: the word "extreme" had been introduced to replace "radical" in the first sentence, and the phrase "and of maintaining or restoring international peace and security, including the provisional measures provided for in Article 40 of the Charter of the United Nations", had been added. The reference to provisional measures had been inserted to cover the possibility of their imposition in terms of Article 40. Reference was made in that regard to the relatively frequent resort to provisional measures by the Security Council in the past.

61. It was noted, by way of a general remark on the paragraph, that the Charter pointedly did not include a reference to "sanctions" and that any such reference in the current text was likewise inappropriate. It was also noted that the working paper did not sufficiently differentiate between the different types of sanctions. Furthermore, it was observed that sanctions should not necessarily be seen as a measure of last resort. Instead, it was pointed out, sanctions could in fact be considered, in certain cases such as arms embargoes, as preventative measures. Conversely, the view was expressed that while the formulation could be improved, the basic thrust of the provision, viz., that

sanctions should be applied only as a last resort, was correct.

62. Concerning the reference to "extreme measures", it was observed that such concept would prove difficult to define in practice. Furthermore, the reference to sanctions only being permissible "after all other peaceful means of settling the dispute" had been exhausted was queried. It was stated that Chapter VII did not focus on settling the underlying dispute, but rather was concerned with maintaining or restoring international peace and security in the face of a threat to or breach of the peace, or act of aggression.

63. Several delegations also expressed the view that the paragraph as currently formulated unduly restricted the activities of the Security Council, beyond what was permitted under the Charter. In particular, the reference to provisional measures, as presented in the working paper, could be read to mean that the Council was required to first decide on provisional measures before imposing sanctions. It was pointed out by various delegations that such an approach would be at variance with the Charter itself, which, in Article 40, provided that the Council "may" impose such measures.

64. The view was expressed that the concluding reference to the determination by the Security Council of the existence to a threat to peace, a breach of the peace or an act of aggression was too narrowly construed in that it did not recognize the competence of regional intergovernmental organizations to take action on behalf of the Council. Indeed, it was subsequently stated in the Working Group that the entire last phrase was superfluous and could be deleted. Conversely, support was expressed for retaining the phrase in question in its current form, since action by regional organizations applied to a different context than that under consideration.

65. In terms of a further view on the concluding phrase, the existing formulation was flawed in that it did not foresee the possibility of sanctions being adopted by regional intergovernmental organizations and/or individual States, without a prior determination by the Security Council, but in conformity with international law and the Charter. In that regard, the following alternative formulation was proposed, based on that found in General Assembly resolution 51/242, annex II, para. 1:

> "As Security Council action under Chapter VII of the Charter of the United Nations, sanctions are a matter of the utmost seriousness and concern. Sanctions should be resorted to only with the utmost caution, when other peaceful options provided by the Charter are inadequate."

66. In response, the sponsor delegation referred to the concerns raised relating to the question of the taking of provisional measures. It agreed that the matter was not clear and suggested that the Special Committee could consider at some point in the future the question of whether the taking of provisional measures was mandatory or merely optional. While agreement was expressed with the view that each principal organ, including the Security Council, had the freedom to interpret the provisions of the Charter applicable to it, the view was expressed that the question of sanctions fell into the sphere of both the General Assembly and the Security Council. With regard to the concluding phrase, it was noted that the language was based on that found in the Charter itself. Furthermore, regional intergovernmental organizations did not enjoy the competence to determine the existence of a threat to the peace, or the breach of such peace. Only the Security Council could do so. Indeed, it was observed that notifying the Security Council after the use of force was a violation of the Charter. At the same time, it was recognized that such regional organizations might enjoy the right to use coercive measures, as long as they were not unlawful. The sponsor delegation further expressed its flexibility on resorting to existing consensus language found in other documents.

Paragraph 2

67. In introducing paragraph 2, the sponsor delegation indicated that the text followed the wording of previous paragraph 3, except for the new phrase "taking into account the views of the State which is the object of sanctions, where appropriate".

68. Concern was expressed regarding the categorical manner in which the paragraph was formulated. The view was also expressed that certain parts of the paragraph seemed too vague and required clarification. Others maintained that the paragraph was of the utmost importance, since it discussed the criteria for the implementation of coercive measures. In that regard, a preference was expressed for the current drafting, which was described as serving as a good basis for deliberations.

69. Suggestions were made to replace the expression "in strict conformity", in the first line, with "in conformity" or "in accordance", or to simply delete the qualifying word "strict". Consistent with the terminology used in paragraph 6, the proposal was made to replace, at the end of paragraph 2, the reference to "neighbouring countries" with the reference to "third States". In terms of a further suggestion, the ideas contained in the paragraph could be divided into two parts: the first part would include the principle that sanctions should be introduced in strict conformity with the Charter, and rules of international law and justice; and the second part would focus on specific conditions for lifting such sanctions.

70. Some delegations expressed doubts regarding the reference to "rules of ... justice" and proposed that the word "justice" be deleted. The observation was made that only the reference to the Charter should be retained. Others preferred retaining the reference to "justice". They recalled that the reference to "principles of justice" could be found in different parts of the Charter, which was itself based on the principles of justice. The view was expressed that sanctions could not be used as a basis for intervening in the internal affairs of States and that sanctions, or any coercive measures, could be taken only in strict compliance with the Charter, the rules of international law, justice, international humanitarian law and the principles of international human rights law.

71. Different views were expressed regarding the proposal that sanctions "have a time-frame". Several delegations maintained that that notion was unrealistic and counter-productive, as opposed to the idea of periodic review of sanctions, which was supported in the Working Group. Furthermore, it could adversely affect the effectiveness of the sanctions in question. It was also pointed out that the need for such a time-frame was less important in the context of "targeted" sanctions than in that of general sanctions and that subjecting the application of sanctions to any time limits was inappropriate in view of the ability of the Security Council to determine the time-frame of sanctions itself, as recognized in General Assembly resolution 51/242, annex II, paragraph 3. It was therefore proposed that the reference to "time-frame" should be deleted. Others were of the view that the introduction of the time-frame was not counter-productive, but rather important, since sanctions should not be applied indefinitely. It would also help to avoid situations where sanctions were applied indefinitely as a result of the exercise of the veto by one of the permanent members of the Security Council. The introduction of a specific time-frame for sanctions was a viable option that would be the most practical at the current stage, the alternative being the abolition of the veto. The introduction of a time-frame would assist in efforts to reform the Security Council and the Organization. That objective had the support of all Member States. The suggestion was also made that a standing body could assess the effectiveness of sanctions, review compliance therewith and conduct multifaceted monitoring of such sanctions based on measurable criteria, including an agreed time-frame.

72. Several delegations opposed the inclusion of the new phrase that account should be taken of "the views of the State, which was the object of sanctions, where appropriate," as being misleading. It was pointed out that such a requirement was not in conformity with rule 37 of the provisional rules of procedure of the Security Council, relating to the invitation of concerned States to meetings of the Council. The proposal was made to replace the paragraph with the following: "Sanctions should be established in strict conformity with the Charter, with clear objectives, provision for regular review and precise conditions for their lifting. The Security Council has the ability to determine the time-frame of sanctions." The proposed language was based on paragraphs 2 and 3 of annex II to General Assembly resolution 51/242. Conversely, the observation was made that a requirement to take into account the views of the State which was the object of sanctions, flowed from the provisions of Articles 31 and 32 of the Charter. By way of compromise, it was proposed that, in accordance with Article 32 of the Charter, the phrase "the views of the State which is the object of sanctions" could be replaced with "the views of the State which is a party to a dispute under consideration by the Security Council".

73. As to the stipulation of conditions for the lifting of sanctions, the view was expressed that the paragraph should be considered in conjunction with paragraph 6 prohibiting the creation of a situation in which sanctions would inflict considerable material and financial harm on third States. The view was also expressed that specific, calculated criteria or conditions which should be met by the target State should be established in order to have the sanctions lifted.

74. Several delegations queried the reference in the last line to a prohibition on linking the lifting of sanctions to situations in neighbouring countries. To some, any linkage to situations in neighbouring States would restrict the ability of Security Council to take action. It was also suggested that the situation in neighbouring countries could affect the decision to lift sanctions. The Special Committee's attention was also drawn to the possible contradiction with paragraph 6. Conversely, it was noted that the lifting of sanctions should depend on the behaviour of the State against which they were directed. In terms of a further proposal, the following text would be added to the end of paragraph 2:

> "It is not permissible to impose on a State, which is the object of sanctions, additional conditions for cessation or suspension of sanctions, except if justified by newly discovered serious circumstances."

75. In commenting on the debate, the sponsor delegation observed that it would be prepared to accept some of the proposals made, including the deletion of the word "strict". On the question of the reference to rules of "justice", it proposed that the text should be reformulated to read "... principles of justice and international law", along the lines of Article 1 of the Charter. Caution was also expressed against taking the view that the Security Council could undertake enforcement measures under Chapter VII with respect to humanitarian situations, since that Chapter only empowered the Council to act in cases of threats to the peace, breaches of the peace and acts of aggression. It also supported the proposal to divide the text into two parts, as well as aligning it with the relevant provisions of paragraph 3 of General Assembly resolution 51/242, annex II.

Paragraphs 3, 4 and 5

76. The sponsor delegation indicated, by way of introduction, that paragraphs 3 and 4 were substantially the same as paragraphs 4 and 7 contained in the previous working paper. Paragraph 5, however, was new. It was based on paragraph 5 of General Assembly resolution 51/242, annex II, and explained the purpose of sanctions, i.e., to modify the behaviour of the party which was the object of sanctions, and not to punish or otherwise exact retribution.

77. In connection with paragraph 3, the observation was made that the principle of giving prior "unambiguous notice" should be aligned with the corresponding provisions in paragraph 7 of General Assembly resolution 51/242, annex II. The qualifying word "unambiguous" should thus be replaced by the word "clear". In addition it was suggested that the word "must" should be substituted by "could".

78. While accepting that, as a general rule, the requirement of prior notice was correct, concern was nevertheless expressed that this might limit the ability of the Security Council to act quickly in certain instances. Prior notice could also be inappropriate, as in the case of the freezing of assets. In support of the provision, it was pointed out that in the light of Article 33 of the Charter parties to any disputes the continuance of which was likely to endanger the maintenance of international peace and security must be given the opportunity to seek solutions. In addition, it was observed that the notion of prior notice was implied in Article 31, allowing for the participation of affected non-members of the Security Council in relevant discussions. It was also recognized that in most cases the Security Council already did give notice prior to imposing sanctions. The paragraph was thus important and should be retained in the text.

79. As regards paragraph 4, it was pointed out that while it was generally understood that sanctions should not have the purpose of overthrowing or changing the lawful regime or existing political order in the target country, the Security Council had in the past resorted to sanctions aimed at restoring the "lawful" government of a Member State which had undergone a coup d'état (as was the case in Haiti) or at changing a discriminatory political system like apartheid in South Africa, and Southern Rhodesia. The proposed provision therefore could negatively affect the ability of the Security Council to act in situations referred to above. Indeed, the observation was made that in certain instances the Security Council could take action directed against the leadership of the target State in order to restore international peace and security. It was also noted that the concept of "lawful regime" was highly contentious since it could be understood to include dictatorships. Conversely, the view was expressed that all provisions of the paragraph were important, since overthrowing a legally elected political regime was not permissible, and was

inconsistent with the Charter of the United Nations, especially Article 2, paragraph 7.

80. In terms of suggested modifications, while it was proposed that only the phrase "existing political order" be deleted, others expressed a preference for the deletion of the paragraph in its entirety, or alternatively its replacement with the text of paragraph 5 of General Assembly resolution 51/242, annex II. It was also suggested that the paragraph could be aligned with the provisions of paragraph 2 of General Assembly resolution 53/10 of 26 October 1998, reaffirming the inalienable right of every State to economic and social development and to choose the political, economic and social system that it deems to be most appropriate for the welfare of its people, in accordance with its national plans and policies. In terms of a further suggestion, paragraphs 4 and 5 could be merged, with the provisions of paragraph 5 preceding those of paragraph 4. Alternatively, a preference was expressed for retaining the paragraph in its current form.

81. With respect to paragraph 5, the suggestion was made that it should be deleted since its thrust was reflected in paragraph 5 of General Assembly resolution 51/242, annex II. The view was also expressed that the paragraph was drafted in excessively categorical terms rather than formulating a recommendation on the matter in line with Articles 10, 11 and 13 of the Charter. Others were of the view that the paragraph was essential and should be retained. It was also observed that if the paragraph were to be merged with paragraph 4, the resultant text would have to be given careful consideration.

82. Responding to the above comments, the sponsor delegation observed that it was open to suggestions on drafting the proposed provisions in a more flexible manner and aligning them closer to the corresponding paragraphs of annex II of General Assembly resolution 51/242. The proposed merger of paragraphs 4 and 5 was also agreeable to the sponsor delegation. At the same time, it stressed that sanctions could not be used for overthrowing political leaders legally elected by the population of the target country.

Paragraphs 6, 7 and 8

83. In introducing paragraph 6, the sponsor delegation noted that it repeated verbatim paragraph 8 of the previous working paper. As regards paragraph 7, it followed paragraph 9 of the previous working paper with the addition of the concluding phrase "and except where explicitly provided for in Security Council decisions". Paragraph 8 tracked, without any change, paragraph 10 of the previous working paper.

84. With regard to paragraph 6, the observation was made that while it was generally understood that sanctions regimes should avoid as far as possible harmful consequences on third States, the language used in the paragraph was too categorical, inflexible, peremptory and rigid. It was therefore suggested that it should be aligned, *inter alia*, with paragraph 25 of General Assembly resolution 51/242, annex II, calling upon the Security Council, the General Assembly and other relevant organs to intensify their efforts to address the special economic problems of third countries affected by sanctions regimes. It was also observed that paragraphs 6 and 8 were inter-linked and could be merged into a single paragraph. The suggestion was advanced that the role of international financial institutions, and other governmental and regional organizations, as suggested in the report of the Secretary-General containing a summary of the deliberations and main findings of the ad hoc expert group meeting on developing a methodology for assessing the consequences incurred by third States as a result of preventive or enforcement measures (A/53/312), and in the note of the President of the Security Council (S/1999/92), should be provided for. It was also noted that the provision could be reformulated so as to ensure that the consequences of sanctions for third States were to be evaluated prior to their imposition on the target State. Others called for the deletion of the paragraph.

85. The view was also expressed that the paragraph appeared to contradict paragraph 2, and concern was voiced that paragraph 8 was not consistent with Article 50 of the Charter of the United Nations. Alternatively, the view was expressed that the proposed provision did not contradict Article 50. Others, in agreeing with the thrust of the paragraph, sought clarification as to who was being referred to in the phrase "the creation of a situation".

86. Concerning paragraph 7, the observation was made that its purpose was unclear, as it was settled that the imposition on the target State of new sanctions or additional conditions was exclusively within the competence of the Security Council; accordingly, the provision was not necessary and could be deleted. It was also remarked that the provision was too self-

restricting. Concern was also expressed that the proposed paragraph could be understood as preventing the Security Council from undertaking periodic reviews of sanctions regimes, or limiting its ability to act when needed. At the same time, the observation was made that the Council should periodically review the effectiveness of sanctions regimes with a view to establishing whether additional conditions for cessation or suspension of sanctions were warranted.

87. Regarding paragraph 8, a preference was expressed for more flexible wording. It was noted that a requirement of prior assessment of the consequences of sanctions could not be imposed on the Security Council as it could negatively affect its ability to take swift action. However, the view was also expressed that sanctions were extreme measures and an "objective assessment" of their humanitarian impact on target States as well as on third countries was appropriate. It was recalled that in the past practice of the Council there had been instances (for example, in the case of Sierra Leone) where arrangements were made foreseeing that the Secretariat, upon request, would provide an assessment of the humanitarian needs and the possible negative effects of sanctions.

88. The view was expressed that "objective assessments" should include an evaluation of preventive and corrective measures. It was also indicated that an assessment of sanctions regimes might be relevant at all stages of their implementation. The suggestion was advanced that the provisions on assessment of the socio-economic and humanitarian consequences of sanctions should be considered in conjunction with section II of the working paper. It was also commented that from the current text it was not clear who would be entrusted with the preparation of assessments.

89. In commenting on the remarks made in the Working Group, the sponsor delegation observed, with respect to paragraph 6, that impermissible "situations" could be viewed objectively, on the understanding that the Security Council was expected to ensure that it was not the source of such situations. It also maintained that the proposed text did not contravene Article 50 of the Charter. It noted, furthermore, that the imposition of sanctions could result in irreparable damage and give rise to substantial collateral harm; therefore, an advance assessment of such sanctions, to be made by the Secretariat, was appropriate. The sponsor delegation expressed its receptiveness to the drafting suggestions aimed at making the text more flexible and compatible with annex II of General Assembly resolution 51/242.

Paragraphs 9, 10 and 11

90. Concerning paragraphs 9 to 11, the sponsor delegation noted that they were new additions. Paragraphs 9 and 11 were based on the note of the President of the Security Council of 29 January 1999 (S/1999/92). Paragraph 10 drew its inspiration from General Assembly resolution 51/242, annex II.

91. While support was expressed during the debate for the purport of paragraph 9, the view was also expressed that the imperative reference to "must" contained an implicit criticism of the willingness of the Secretariat to undertake such assessments. Such criticism was considered unwarranted. Instead, it was suggested that, if the paragraph was to be retained, it could be reformulated along the lines of paragraph 9 of the note of the President of the Security Council referred to above, so as to place the emphasis on the Security Council being encouraged to request such an assessment from the Secretariat. Conversely, a preference was expressed for retaining the provision as presented.

92. As to paragraph 10, the attention of the Special Committee was drawn to the difference between the proposed text, which referred to the "population of the State", and paragraph 18 of annex II to General Assembly resolution 51/242, which referred instead to "target countries". The view was expressed that the paragraph should instead refer to the target State. That would be the general rule, to which some exceptions in cases where no central authority existed, could be considered. In terms of a further view, the Security Council would be required to first certify the economic situation of the population in question, so as to ensure that it could properly benefit from the envisaged resources and financing. At the same time, doubt was expressed with regard to the wisdom of categorizing populations for purposes of humanitarian assistance, and support was expressed for the retention of the reference to "population". Reference was also made during the discussion to General Comment No. 8 (1997) on the relationship between economic sanctions and respect for Economic, Social and Cultural Rights, adopted by the Committee on Economic, Social and Cultural Rights at its seventeenth session, on 4 December 1997.[16]

93. A further suggestion was made to consider discussing paragraph 10 in the context of section II, and in the light of the discussion of the provisions therein relating to the humanitarian impact of sanctions. It was also proposed to replace paragraph 10 with the last sentence of paragraph 4 of annex II to resolution 51/242, together with the entire paragraph 18 of the same text. The proposed revised paragraph 10 would thus read:

> "Sanctions regimes must also ensure that appropriate conditions are created for allowing an adequate supply of humanitarian material to reach the civilian population. Foodstuffs, medicines and medical supplies should be exempted from United Nations sanctions regimes. Basic or standard medical and agricultural equipment and basic or standard educational items should also be exempted; a list should be drawn up for that purpose. Other essential humanitarian goods should be considered for exemption by the relevant United Nations bodies, including the sanctions committees. In this regard it is recognized that efforts should be made to allow target countries to have access to appropriate resources and procedures for financing humanitarian imports."

Conversely, in supporting the retention of the current formulation of the paragraph, the point was made that a distinction should be drawn between the legal principle and what was possible on the ground.

94. Regarding paragraph 11, support was expressed in the Working Group for the establishment of a monitoring mechanism. It was suggested that paragraph 11 should more closely track similar activities being undertaken in other forums. It was also suggested that the paragraph should be considered again in the future in the light of the expected comments of the Secretary-General on how best to evaluate the impact of sanctions on third States.

95. Furthermore, doubts were expressed as to whether the Secretariat should be given the responsibility of monitoring the effects of sanctions. While flexibility on the matter was expressed, it was suggested that the responsibility should instead be that of the Security Council and its sanctions committees, working with the assistance of the Secretariat.

96. In terms of a further suggestion, paragraph 11 would be reformulated as follows:

> "Following the introduction of sanctions, the Secretariat should be requested to assist in monitoring their impact on third countries which have suffered or may suffer as a result of their implementation, so that the Security Council and its sanctions committees may receive timely information and early estimates in that regard, and may, while maintaining the effectiveness of the sanctions regime, make the necessary corrections or partial changes to its implementation or to the regime itself in order to mitigate the negative impact of the sanctions on third countries."

97. The sponsor delegation, referring to the comments on paragraph 9, agreed to a reformulation that made the wording less categorical, while at the same time not imposing an obligation on the Secretariat. Instead, the emphasis would be placed on encouraging the Security Council to avail itself of existing mechanisms within the Secretariat. On paragraph 10, the view was expressed that the question of its location in the draft articles, i.e., whether it should be moved to section II, should only be considered after the completion of the discussion on both sections. Furthermore, it was pointed out that the reference to "population" had been inserted on purpose in recognition of the fact that invariably it was the general population of the target State that bore the burden of sanctions. However, the sponsor delegation declared itself open to other proposed formulations. It also expressed interest in the reference to General Comment No. 8 (1997), and to the possibility of including a sentence on ensuring unimpeded access to humanitarian assistance and procedures. Concerning paragraph 11, the sponsor delegation noted the support in the Special Committee for the basic thrust of the provision, subject to finalizing its formulation and taking into account the work currently being undertaken in other forums.

C. Consideration of the working paper submitted by the Russian Federation entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations"

98. During the general debate held at the 232nd meeting of the Special Committee, on 10 April 2000,

the sponsor delegation, the Russian Federation, referred to the working paper entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" (A/AC.182/L.89/Add.2 and Corr.1)[17] submitted by the Russian delegation at the 1998 session of the Special Committee. The sponsor delegation reiterated that the aim of the proposal was to improve the United Nations peacekeeping operations by elaborating the legal basis of those operations. It was pointed out that relevant recommendations to be elaborated in this area would take into account the extensive experience of the Organization in the field of peacekeeping. Owing to the multifaceted nature of the issue, it was suggested that the focus first be on the development of a legal framework of the peacekeeping missions carried out with the consent of States in the context of Chapter VI of the Charter. The working paper identified key elements of said legal framework as a basis for the discussion, which included a clear definition of the mandate of peacekeeping operations, including humanitarian assistance; establishing the limits to the peacekeepers' right to self-defence, while strengthening their protection; analysing the mechanism of apportioning responsibility between the United Nations and troop-contributing States for the damage caused in the course of peacekeeping operations; and specifying basic principles of peacekeeping, including the principles of neutrality, impartiality and non-interference in the internal affairs of the States parties to the conflict. The sponsor delegation suggested that a working group, consisting of experts from the Special Committee on the Charter and from the Special Committee on Peacekeeping Operations, be established for the further complex consideration of the principles and criteria for the work of peacekeeping missions.

99. While the view was expressed that the working paper contained some basic ideas which were useful and that it would be beneficial to prepare a declaration on the subject, some other delegations pointed out that the work of the Committee on this issue was a duplication of work of other United Nations bodies specifically mandated to deal with the issues of peacekeeping, notably the Special Committee on Peacekeeping Operations.

100. At the 4th meeting of the Working Group, on 12 April 2000, the sponsor delegation, while recalling views expressed in the past, reiterated its proposal made during the general debate that consideration be given to the convening of a meeting or the establishment of a joint working group of the Special Committee on the Charter and the Special Committee on Peacekeeping Operations to hold discussions on the draft proposal and other matters relating to peacekeeping. In its view, such cooperation would contribute to a "soft codification" of existing principles and criteria in this field. In this connection, the sponsor delegation stated that it would be desirable to request the Secretary-General to prepare a study on the existing practice applicable to the convening of joint meetings or the establishment of joint working groups or other similar bodies of the General Assembly. The available precedents could assist the Special Committee on the Charter to take a decision on the matter.

101. During the ensuing discussion, some delegations reaffirmed positions expressed during previous sessions of the Special Committee. In particular, it was pointed out that the proposal under consideration overlapped with the work of other bodies, in particular the Special Committee on Peacekeeping Operations. It was observed that the Special Committee on Peacekeeping Operations, which had held a productive session from 11 February to 10 March 2000, was the only forum in the United Nations to review the whole question of peacekeeping operations in all their aspects, including legal aspects. Some delegations stated that they did not view the consideration of the proposal useful or necessary. The view was also expressed doubting the benefit that would be derived from the proposed declaration. Another view was expressed that the proposal had no added value because it was general in nature.

102. Some delegations pointed out that the legal nature of the proposal gave it a special character, appropriate for consideration by the Special Committee on the Charter. It was furthermore stated that recent developments in international law, including the adoption of the 1998 Rome Statute of the International Criminal Court, containing provisions which had some implications on peacekeeping, necessitated that focus be given to the legal aspects of peacekeeping operations.

103. Concerning the procedural proposal for a joint meeting, doubts were expressed about its feasibility. It was pointed out that representatives who participate in the work of the Special Committee on the Charter had a busy schedule, including meetings of the Preparatory

Commission for the International Criminal Court. Similarly, the Special Committee on Peacekeeping Operations was scheduled to have an informal meeting to consider its work during 2000. Some delegations pointed out that a joint meeting of the two committees was unnecessary and burdensome. In their view, it was up to each delegation to coordinate its efforts and take coherent positions when participating in the work of various committees. It was also stated that to convene such a joint meeting of the committees was a pointless exercise because such an approach was not going to overcome the substantive objections to the proposal. Other delegations stated that it would be premature to request the Secretary-General to prepare a study on the precedents regarding the convening of such a meeting without first soliciting the views of the Special Committee on Peacekeeping Operations. To their knowledge, the Committee in question had not raised the issue, nor had it requested the assistance of the Special Committee on the Charter in this respect. It was therefore suggested that the sponsor delegation should raise the matter in that Committee as well. A view was also expressed doubting the relevance of the practice of other joint working groups or similar bodies, considering the specific nature of the work of the Special Committee on Peacekeeping Operations as well as its mandate.

104. Some delegations said that they did not have a firm position on the question because sound arguments had been advanced by both sides. Those delegations did not object to consulting with the Special Committee on Peacekeeping while at the same time soliciting the assistance of the Secretariat on the question of the existing practice. It was suggested that the Chairman of the Special Committee on the Charter could consult the Chairman of the Special Committee on Peacekeeping Operations. A point was however made doubting whether the chairmanship of a particular committee extended beyond the duration of that committee's session. It was also suggested that the sponsor delegation could convene informal consultations involving representatives of both committees. It was recalled that representatives of the Sixth and Second Committees had held informal consultations on the question of oceans and law of the sea during the fifty-fourth session of the General Assembly. The proposal on the convening of informal consultations was supported by some delegations as being practical.

105. Some delegations supported the proposal to hold a joint meeting or to establish a joint working group, if the administrative conditions were clarified by the Secretariat. Such a meeting could help in clarifying certain aspects of the question and it did not necessarily mean that a new instrument would have to be elaborated.

106. Commenting on the decision-making processes involved, the point was made that a mandate for any joint meeting should only be given by the General Assembly. In this connection, it was envisaged that any such meeting could not in any event be held until 2001 at the earliest.

107. The sponsor delegation expressed preference for advance clarifications from the Secretariat because the information provided would help the delegation to decide how best to approach the Special Committee on Peacekeeping Operations on the question. For example, it was stressed that it was not clear how such a meeting would be convened or a working group established, whether through agreement between the chairmen of the two committees or a decision of the two committees or of the General Assembly. The sponsor delegation also doubted whether the proposed convening of informal consultations would assure representation of all interested delegations. In responding to a question about the scope of the request to the Secretariat, the sponsor delegation stated that it did not want a detailed study on the issue. It only sought information on: (a) whether there had been joint meetings or there had been precedents of joint working groups or similar bodies in the framework of the General Assembly that had taken place in the last several years; (b) the documents prepared if any; and (c) the procedure followed to convene such meetings.

108. Some delegations wondered whether, with the clarifications given, the request to the Secretariat should be based on a decision of the Special Committee on the Charter. Some delegations pointed out that while some delegations had requested information from the Secretariat, it had to be clearly understood that the Committee had not asked for such information and that the unnecessary utilization of the resources of the Secretariat should be avoided.

109. The sponsor delegation expressed the hope that the Secretariat would be in a position to provide the information sought. It therefore proposed the suspension of the consideration of the proposal. After

some discussion, the Working Group deferred the conclusion of its consideration of the proposal only for the purpose of receiving a presentation from the Secretariat if information sought by the sponsor delegation was available before the conclusion of the Working Group's substantive discussion. A view was expressed that the sponsor delegation should provide the delegations with a text of its proposal for a joint meeting/Working Group for their respective capitals.

110. At the 9th meeting of the Working Group, on 14 April 2000, the Secretary of the Committee orally presented the information requested by the sponsor delegation. The Secretariat had made contacts with officials of the Department of General Assembly Affairs and Conference Services, including those of the secretariats of the Second and Third Committees. As far as those officials were able to determine, there was no precedent for any joint session of the Committee or joint working group during the period under review (see para. 107 above). However, there had been joint briefings for the Second and Third Committees on the item entitled "Further measures for the restructuring and revitalization of the United Nations in the economic, social and related fields",[18] the bureaux of the two Committees did meet though on a completely informal basis and without any documentation resulting from such a meeting. Occasionally there were joint meetings of other bodies (for example, the bureaux of the two preparatory committees for the two special sessions of the General Assembly to be held in June 2000), also on a very informal basis. In the light of the above information and in the absence of any provisions in the rules of procedure of the General Assembly for establishing a joint working group, there was no established practice for the procedure to be followed in that regard.

111. The sponsor delegation thanked the Secretariat for the information and recalled that such precedents existed in the practice of the United Nations; for example, there was a joint working group of the Third and the Sixth Committees of the General Assembly on the preparation of a draft convention on the non-applicability of statutory limitations to war crimes and crimes against humanity.[19] The sponsor delegation indicated that the information given would help it to decide on the next course of action.

D. Consideration of the working papers submitted by Cuba at the 1997 and 1998 sessions of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness"

112. During the general debate held at the 232nd meeting of the Special Committee, on 10 April 2000, the delegation of Cuba recalled the proposals which had been put forward in 1992 and which were contained in previous reports of the Special Committee.[20] It was noted in this regard that the premise for such proposals was that the democratization of the Organization, which would include the Security Council, should be carried out in a balanced way. In this connection, the delegation of Cuba was of the view that its working paper (A/AC.182/L.93/Add.1)[21] had a particular validity since it dealt with the competence of the Security Council and the General Assembly in the maintenance of international peace and security at a time when the Assembly had been increasingly marginalized by the Security Council. The sponsor delegation felt that the proposal sought, on the basis of the provisions of the Charter, to reverse that imbalance and expressed the hope that it would constitute an important input to the debate on the issue.

113. At the 4th meeting of the Working Group, on 12 April 2000, the sponsor delegation indicated that although the General Assembly had established other working groups to deal with the reform of the United Nations, the results obtained had been quite modest in some cases, had gone on to become part of the institutional memory or had been forgotten in other cases, while negotiations on other aspects of the reform had reached an impasse. In this connection, the sponsor delegation considered that the debates in the Special Committee could constitute an important contribution to the negotiations undertaken in other organs.

114. Although the sponsor delegation recognized that some aspects of the reforms contained in its initial proposals on the working methods of the Security Council had been overtaken by the negotiations carried out in the Open-Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters related to the Security Council, and that some had been incorporated into the Council's practice, there were

nonetheless other elements that still merited consideration.

115. At the 5th meeting of the Working Group, on 12 April 2000, the sponsor delegation invited delegations to reflect on the following issues and expressed the hope that their consideration would be given priority:

(a) The necessity to identify the ways and means to ensure that the General Assembly can periodically assess, in practical ways, the work of the Security Council, including the work of the permanent members, beyond the consideration of its annual report to the General Assembly;

(b) The necessity to promote a debate on the balance between the functions of the principal organs of the United Nations, in accordance with the Charter, and to consider the appropriate forum to do so.

116. Some delegations expressed their support for the proposal by the sponsor delegation to consider the recent change in the delicate balance between the functions of the General Assembly and the Security Council, to the detriment of the former. It was noted that the Assembly also had a role in the maintenance of international peace and security, which was not an exclusive function of the Security Council. The point was also raised that the International Court of Justice, not the Security Council, had a role to play in the case of legal disputes. In that connection, attention was drawn to Article 36, paragraph 3, of the Charter. Reference was also made to the declarations and resolutions adopted by the General Assembly on the question of fact-finding missions as an effective means of establishing the facts impartially, which in turn would necessarily assist in reaching a peaceful settlement of the conflict in question.

117. Some delegations were of the view that the dynamic negotiating process in the Open-Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters related to the Security Council was addressing the points raised by the sponsor delegation and that that Working Group was the appropriate forum for such discussions. As regards the first point raised by the sponsor delegation, it was noted that there might be a barrier to having the General Assembly assess the Security Council.

118. For its part, the sponsor delegation indicated that, although some aspects of its proposal could be considered by the Open-Ended Working Group referred to above, it preferred a substantive debate in the General Assembly.

E. Consideration of the revised proposal presented by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security

119. At the 5th meeting of the Working Group, on 12 April 2000, the delegation of the Libyan Arab Jamahiriya recalled its revised proposal (A/AC.182/L.99)[22] and expressed the hope that the Special Committee could begin its consideration in due course.

F. Consideration of the working paper submitted by the Russian Federation and Belarus

120. During the general debate held in the Special Committee, at its 232nd meeting, on 10 April 2000, reference was made to the proposal by the Russian Federation and Belarus, submitted at the previous session of the Special Committee (A/AC.182/L.104/Rev.1),[23] to recommend that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States, either without the prior authorization of the Security Council or outside the context of self-defence. The Russian Federation, as co-sponsor, reiterated its view that no State or group of States was entitled to bypass the United Nations when resorting to the use of force, and that enforcement measures might only be undertaken within the parameters of the Charter of the United Nations, and with the authorization of the Security Council. It noted that the working paper had been proposed in defence of key provisions of the Charter, and that the Special Committee was thus the appropriate forum for its discussion. Reference was also made to another document prepared by the Russian Federation entitled "Concept of the world in the twenty-first century",[24] in which a new concept of peace had been proposed.

121. It was stated in the Special Committee that the proposal under consideration reflected many important

aspects relative to the functioning, efficiency and legitimacy of the United Nations, at a time of great complexity for the international community. Reference was made in particular to the principles contained in the Act of Veracruz of 19 March 1999, which reflected a basic consensus among some Member States on the need to strengthen the United Nations, with due respect to the objectives and principles set forth in the Charter, as a way of promoting the maintenance of international peace and security. Another view was expressed that, apart from the exercise of self-defence under Article 51, any military action against a sovereign State constituted a violation of the Charter.

122. The working paper was next discussed in the context of the Working Group at its 5th meeting, on 12 April 2000. The Russian Federation, in introducing the discussion on the proposal, pointed to the need to affirm the immutability of the principle of the non-use of force and other related principles. At the same time, it was recognized that the principle of non-intervention was evolving in the direction of greater transparency, and that in some cases enforcement measures could be resorted to in the face of flagrant violations of human rights. The examples of Haiti, Somalia and East Timor were referred to in that regard. However, it was also reiterated that, under the Charter, only the Security Council may act on behalf of the international community, and that calling into question the need to resolve disputes peacefully on the basis of the equality of States was tantamount to calling into question international law itself. Reference was again made to the above-mentioned new concept of peace for the twenty-first century, proposed by the Russian Federation for consideration by the Millennium Assembly of the United Nations. The new concept included as a key aspect the issue of the use of armed force in international relations. In the sponsor's view, it was important to ensure that the system of international security established by the United Nations became a reliable impediment to armed conflict. As such, the working paper had been proposed with a view to the progressive development of the legal principles related to the non-use of force. It was recommended that the Special Committee continue to consider the topic at its 2001 session, taking into account the outcome of the Millennium Assembly, with a view to developing recommendations on the proposal to be submitted to the General Assembly at its fifty-sixth session in 2001.

123. The delegation of Belarus, also in its capacity as co-sponsor, stated its view that the system established by the Charter remained the cornerstone for maintaining international peace and security. It further described the operative provisions of the proposal and expressed the view that the proposal did not infringe on the competence of the Security Council. It observed further that the International Court of Justice's interpretation of Chapter VII could serve as a basis for the Special Committee's development of further texts on the maintenance of international peace and security.

124. During the ensuing debate, the view was expressed that the violations of the Charter being referred to constituted aggression and State terrorism. Therefore the proposal was supported so as to strengthen the prestige of the Organization and to reaffirm the principles on which the Charter was built. Support was also expressed for a careful review of the proposal, followed by its submission to the General Assembly at its fifty-fifth session for consideration.

125. Others thanked the sponsor delegations for their proposal and information and reiterated their positions as elaborated during the previous session of the Special Committee, and reflected in its report. Reference was also made to the comment of the Russian Federation that the matter would be considered at the Millennium Assembly, and therefore, in the light of that view, that the Special Committee should not consider the proposal further. The view was expressed that consideration of the topic should continue at its next session.

Chapter IV
Peaceful settlement of disputes

Consideration of the revised proposal submitted by Sierra Leone entitled "Establishment of a dispute prevention and early settlement service"

126. During the general debate held at the 232nd meeting of the Special Committee, on 10 April 2000, some delegations recalled the work of the Special Committee on the proposal submitted by Sierra Leone,[25] in particular the informal working paper submitted by the United Kingdom of Great Britain and Northern Ireland at the 1999 session,[26] and noted that the proposal, with its emphasis on existing

mechanisms, merited further study. Those delegations expressed the hope that concrete results would be achieved during the current session of the Special Committee on the basis of that proposal.

127. At the 6th meeting of the Working Group, on 13 April, the delegations of Sierra Leone and the United Kingdom submitted a joint revised informal working paper, which read as follows:

"*The General Assembly*,

"*Recalling* Article 33 of the Charter of the United Nations, and *underlining* the obligation of Member States to seek a solution of their disputes by peaceful means of their choice,

"*Noting with appreciation* the work done by the delegation of Sierra Leone during recent sessions of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization to encourage States to focus on the need to settle peacefully disputes between them at an early stage before they are likely to endanger the maintenance of international peace and security,

"*Emphasizing* the need to promote the peaceful settlement of disputes,

"*Recalling* the various procedures and methods for prevention of disputes and the peaceful settlement of disputes available to States, including fact-finding missions, good-will missions, special envoys, observers, good offices, mediators and conciliators,

"*Recalling also* its previous relevant resolutions, in particular resolution 2329 (XXII) of 18 December 1967, in which it requested the Secretary-General to prepare a register of experts whose services States parties to a dispute might use for fact-finding in relation to the dispute; resolution 44/415 of 4 December 1989, the annex to which contains a draft document on resort to a commission of good offices, mediation or conciliation within the United Nations; and resolution 50/50 of 11 December 1995, the annex to which contains the United Nations Model Rules for the Conciliation of Disputes between States,

"*Noting with satisfaction* that, pursuant to its recommendation contained in resolution 47/120 of 18 December 1992, the Secretary-General established a list of eminent and qualified experts for his use in fact-finding and other missions, and that this list has recently been updated,

"*Recalling further* that certain multilateral treaties, of which the Secretary-General is a depositary, provide for the creation of lists of conciliators and arbitrators for use by States in the settlement of their disputes,

"*Reaffirming* the important role played by the International Court of Justice and the International Tribunal for the Law of the Sea in the settlement of disputes between States,

"1. *Reaffirms* the duty of all States to find peaceful means by which to settle any dispute to which they are parties before such dispute is likely to endanger the maintenance of international peace and security;

"2. *Encourages* States parties to any dispute to endeavour to settle it as early as possible;

"3. *Notes* the wide variety of procedures and methods for the prevention of disputes and the peaceful settlement of disputes currently available to States, both inside and outside the United Nations system;

"4. *Takes note* of the useful paper prepared by the Secretariat entitled 'Mechanisms established by the General Assembly in the context of dispute prevention and settlement' (A/AC.182/2000/INF/2);

"5. *Urges* States parties to any dispute to make the most effective use of existing procedures and methods for dispute settlement;

"6. *Encourages* States to nominate suitably qualified persons who are willing to provide fact-finding services, for inclusion in the register set up by the Secretary-General pursuant to paragraph 4 of General Assembly resolution 2329 (XXII);

"7. *Encourages also* eligible States to nominate suitably qualified persons to have their names included in the lists of conciliators and arbitrators provided for under certain treaties, of which the Secretary-General is depositary,

including the Vienna Convention on the Law of Treaties and the United Nations Convention on the Law of the Sea;

"8. *Reminds* States of the important role played by the International Court of Justice and the International Tribunal for the Law of the Sea in the peaceful settlement of disputes;

"9. *Requests* the Secretary-General to take such steps as he deems necessary from time to time to encourage States to designate suitably qualified persons for inclusion in the various lists referred to above which he has responsibility for maintaining."

128. In introducing the working paper, the delegation of the United Kingdom stated that in revising the informal paper submitted during the 1999 session the co-sponsors had sought to clarify the scope and objectives of the draft, as well as to incorporate additional references to relevant existing mechanisms, including those created by major multilateral treaties. The co-sponsors had taken into account, *inter alia*, the note by the Secretariat entitled "Mechanisms established by the General Assembly in the context of dispute prevention and settlement", prepared in response to a request contained in paragraph 108 of the report of the Special Committee on its previous session[27] and circulated at the 5th meeting of the Working Group on 12 April. The co-sponsor delegation noted that, apart from some stylistic changes, the first preambular paragraph remained substantially the same. The second preambular paragraph was also unchanged, except for minor amendments to align the text with the language of Article 33 of the Charter of the United Nations. In this connection, it was noted that the words "likely to cause a threat" were replaced by "likely to endanger". The third preambular paragraph remained unchanged. The fourth preambular paragraph was new, containing an illustrative list of procedures and means. It was also noted that the previous fourth preambular paragraph had been deleted because the Panel established by resolution 268 (III) D had never been used, and consequently, operative paragraph 4 of the previous informal paper had also been deleted. The fifth preambular paragraph was a combination of the previous fifth and sixth preambular paragraphs and it also included other relevant resolutions. It was pointed out that consideration could be given to the addition of other resolutions, such as resolution 46/59, the annex to which contains the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security. The sixth preambular paragraph was new and took into account the paper prepared by the Secretariat. The seventh preambular paragraph was also new, focusing on regimes established in multilateral treaties of which the Secretary-General was the depositary. It was stated that this paragraph had to be read together with operative paragraph 7, which was more specific, and singled out two multilateral treaties of immediate interest. The eighth preambular paragraph was also new and acknowledged the importance of judicial settlement of disputes.

129. Turning to the operative paragraphs, the delegation of the United Kingdom noted that paragraphs 1 and 2 were previously paragraph 1; minor changes had been introduced to paragraph 1 to ensure compatibility with the provisions of the Charter. Paragraph 3, formerly paragraph 2, remained largely unchanged, except for the addition of the notion of prevention of disputes. Paragraph 4 was new and took note of the Secretariat's paper. In this connection, a request was made that the paper be issued as an official United Nations document. Paragraph 5, originally paragraph 3, was unchanged. Paragraph 6 was an amended version of the former paragraphs 5 and 6. Paragraph 7 was new and made specific reference to the Vienna Convention on the Law of Treaties and the United Nations Convention on the Law of the Sea since those instruments established lists of conciliators and arbitrators.[28] Paragraph 8 was new and was related to the eighth preambular paragraph. Paragraph 9 was a revised version of the previous paragraph 6 and was intended to apply to all instruments that established lists of experts referred to in the draft resolution. In concluding, it was noted that the co-sponsors remained open to suggestions and welcomed comments from delegations. The other co-sponsor delegation, Sierra Leone, informed the meeting that it was prepared to hold informal consultations on the proposal.

130. Support was expressed for the revised informal paper, noting that it was a good basis for further work. The view was expressed that the paper contained positive improvements, and underlined the new approach that placed emphasis on the existing mechanisms on peaceful settlement of disputes. It was noted that the support given to the proposed text demonstrated how the Special Committee was uniquely qualified to consider matters to which the Charter

attached primary importance, such as the peaceful settlement of disputes. It was recommended that an effort be made to conclude the consideration of the proposal during the current session of the Special Committee, and an opportunity to discuss the text informally was welcomed. Appreciation for the paper prepared by the Secretariat and support for its issuance as an official document of the United Nations[29] was also expressed.

131. Some delegations, while welcoming an orientation that encouraged the use of existing mechanisms, cautioned against taking a partial approach to a subject that demanded a comprehensive analysis and on which important achievements had already been made. It was pointed out that the principle of the peaceful settlement of disputes, which was closely linked to other principles of international law, should not be considered in isolation and any draft should clearly reflect all the principles in a holistic fashion. In this context, it was observed that the General Assembly had adopted a number of important resolutions and declarations which reaffirmed and dealt with the issues involved comprehensively. These instruments included resolutions 2627 (XXV), 2734 (XXV) and 40/9 as well as the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV)) and the Manila Declaration on the Peaceful Settlement of International Disputes (resolution 37/10). One delegation expressed doubts as to the usefulness of adopting in future a new document in the context of a mechanism for the peaceful settlement of disputes.

132. The importance of the purposes and principles of the Charter as well as the principle of free choice of means was also stressed. With regard to the latter, the relevance of traditional means of settlement of disputes, in particular negotiation, was highlighted. The consensual nature of the means and methods of dispute settlement was emphasized, and it was also noted that the revised informal paper omitted an important element contained in the original proposal, namely, the voluntary nature of the services offered.[30] The view was also expressed that the informal paper did not add any new element to the existing body of instruments.

133. The observation was made that the paper did not sufficiently address the question of prevention of disputes. In this connection, it was noted that the existence of a new generation of conflicts required an appropriate response, which included a comprehensive strategy for conflict prevention. Advocating more time, some delegations stated that the seriousness of the issues under consideration demanded reflection and deliberation. Doubt was expressed as to whether a resolution was the most appropriate instrument to be adopted.

134. The delegation of the United Kingdom reiterated the flexibility of the co-sponsors with regard to the content of the informal paper. It also pointed out that the sponsors had made a conscious attempt to streamline the resolution and avoided being over-ambitious, so as not to lose the focus and scope of the proposal. It also expressed the hope that a concrete outcome would be achieved during the current session of the Special Committee.

135. At its 6th and 7th meetings, on 13 April, the Working Group discussed the revised informal working papers on a paragraph-by-paragraph basis. Some delegations expressed reservations over the detailed consideration of the paper at that stage, maintaining that the aim of the proposal was conceptually and textually not clear. They stated that their silence should not be interpreted as acceptance of, or acquiescence in, the proposal and they reserved the right to revert to the proposal after consulting their authorities.

First preambular paragraph

136. A suggestion was made to identify an overarching theme and define the purpose of the proposal, clearly setting out its focus. In this regard, a suggestion was made to agree first on the title of the resolution, which could confine consideration only to mechanisms established by the General Assembly. In addition, a specific proposal was made that the title should be amended to read "Prevention of disputes by encouraging States to make use of the existing means for dispute settlement". Some delegations proposed a reaffirmation of the purposes and principles of the Charter before the principle of free choice of means, emphasizing the need for a specific reference to the obligations under Article 2, paragraphs 3 and 4, of the Charter in the current paragraph or in a separate opening preambular paragraph. The necessity of recalling all resolutions of the General Assembly that were related to the subject matter was also stressed. It was suggested that the reference to Article 33 should be in operative paragraph 1, as opposed to the current

paragraph. It was also suggested that the language of Article 33 should be followed closely, in particular "their choice" should be "their own choice". It was proposed that the paragraph should not only recall the traditional means of dispute settlement but also reflect any new elements that were peculiar to conflict prevention.

137. In the light of the discussions held previously on the initial proposal by Sierra Leone, a view was expressed cautioning against being over-ambitious and stating that the revised informal paper struck a manageable balance to build upon.

Second preambular paragraph

138. An observation was made that the wording of the paragraph was vague and not entirely satisfactory. In particular, it was not clear whether the statement of appreciation in the text should be to the delegation of Sierra Leone or to the Special Committee.

Third preambular paragraph

139. The point was made that the question of the peaceful settlement of disputes should be considered also in the context of early warning and conflict prevention. It was therefore suggested that the phrase "early warning and prevention and" be inserted after the word "*Emphasizing*".

Fourth preambular paragraph

140. A suggestion was made that the paragraph should refer to binding third-party dispute settlement procedures as well. The extension of the procedures to the Security Council as well as the General Assembly was also proposed. Some delegations expressed concern with the listing of the mechanisms, indicating that its scope was unclear, and requested its deletion; others questioned the appropriateness of including non-traditional mechanisms such as special envoys and observers. Other delegations, however, favoured the retention of the list since it added specificity to the paragraph. Moreover, it was suggested that the list could be expanded to include such notions as preventive deployment, as means of prevention, provided the deployment was made with the consent of the parties concerned. On the other hand, some doubt was expressed as to whether preventive deployment was a means of settlement of disputes. It was also stated that the means of prevention were not well established. It was further pointed out that the question of consent was implied in the language of the first preambular paragraph.

141. It was proposed that since the list was intended to be only illustrative, the words "*inter alia*" could be used in the text. Some delegations observed that if the list was retained, all the traditional means referred to in Article 33 of the Charter should be added. In this connection, it was suggested that the traditional means, such as negotiation, should be accorded primacy in the listing over the other means that were currently in the text.

Fifth preambular paragraph

142. A view was expressed suggesting the combination of this paragraph with the fourth preambular paragraph in order to avoid the problems raised regarding the scope of the fourth preambular paragraph. Some delegations supported the additional reference to the Declaration on Fact-finding. A proposal was also made to include, as a minimum, the Declaration on Principles of International Law concerning Friendly Relations, the Manila Declaration and the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the Organization in this Field (General Assembly resolution 43/51, annex) because those instruments provided the basic framework for the consideration of questions relating to the peaceful settlement of disputes.

Sixth preambular paragraph

143. There were no comments made with respect to the sixth preambular paragraph.

Seventh preambular paragraph

144. The view was expressed that the seventh preambular paragraph should be specific and list some examples. At the same time, the restriction to certain multilateral treaties, of which the Secretary-General was a depositary, was questioned. In this connection, it was proposed that the reference to the Secretary-General be deleted. It was noted that such a deletion might usefully entail a wider interpretation that would include such bodies as the Permanent Court of Arbitration.

145. The delegation of the United Kingdom, while open to suggestions, clarified that the restriction was intended to give the proposal a United Nations focus. Under operative paragraph 9, the Secretary-General would have a role of encouraging States to designate suitably qualified persons for inclusion in the various lists that these instruments have established. It also reminded delegations that the paragraph should be read together with operative paragraph 7.

Eighth preambular paragraph

146. The point was made that this paragraph should include references to the important role played by the Security Council, as the principal organ with the primary responsibility for the maintenance of international peace and security, as well as to the General Assembly. Some delegations, while agreeing with the inclusion of a reference to the Security Council, doubted the reference to the General Assembly since the eventual instrument was going to be adopted by the same Assembly. Other delegations preferred retaining the paragraph without change because it was concerned with judicial settlement of disputes. It was therefore suggested that the additional references to the role of Security Council could be the subject of a separate paragraph. A point was made stressing the need to strike an appropriate balance in the text between judicial and political settlement. A suggestion was also made to delete either the eighth preambular paragraph or operative paragraph 8 since they covered similar ground. A proposal was made to add the words "and other international tribunals" after "Law of the Sea", in order to broaden the scope of the paragraph. Alternatively, the addition of the words "*inter alia*" after the word "played" was suggested. Other delegations, however, objected to the amendment, pointing out that its actual scope would remain unclear. In response, the Permanent Court of Arbitration was cited as an example of an international tribunal to which the paragraph, if amended, would apply.

Operative paragraphs 1 and 2

147. The need to maintain in the above paragraphs the balance between dispute prevention and dispute settlement was reiterated by some delegations. It was therefore suggested that notions of early warning and the ability to take anticipatory action in order to prevent an aggravation of the situation needed to be addressed in paragraph 1 or in a separate paragraph. A point was also made that the current paragraph should be preceded by another paragraph that would lay down the international legal foundation for settlement of disputes and prevention of situations, namely, the Charter, decisions of the Security Council and the rule of international law and justice. The importance of the obligations under the Charter, particularly Article 2, paragraph 3, was stressed.

148. It was suggested that the second preambular paragraph should remain part of the first preambular paragraph. The observation was also made that the paragraph raised an interesting proposition that needed further reflection. In this context, it was stated that in order to reach a fair and equitable settlement of a dispute, an agreement between the parties, determined on the basis of international legal principles and, as a secondary consideration, the need for a long-term and lasting solution, was paramount. It was therefore suggested that early settlement might, in certain instances, exacerbate the situation. It was noted, on the contrary, citing Article 38, paragraph 2, of the Statute of the International Court of Justice, that legal considerations were not always the basis for reaching an agreement and parties to a dispute might reach a settlement based on any other considerations, provided there was no conflict with a peremptory norm of international law (*jus cogens*).

Operative paragraph 3

149. Some delegations suggested deletion of references to prevention because the procedures and methods of prevention were not clear. In particular, the phrases "wide variety" and "inside and outside" seemed to broaden the scope of the paragraph. It was suggested that the mechanisms be restricted to the United Nations. In response, it was observed that there were a number of procedures that were available under the Charter for purposes of prevention of disputes. What needed to be stressed was the fact that those procedures were available only at the request or with the consent of the parties concerned. It was also pointed out that the Secretary-General, with an efficient early warning system, could prevent a situation from becoming a dispute. It was noted that examples outside the United Nations included the High Commissioner on Minorities and rapporteur missions within the context of the Organization for Security and Cooperation in Europe (OSCE), and it was observed

that the deployment of such mechanisms or in similar situations did not always require the consent of the States concerned. Those examples were also given in support of a restriction to the procedures and methods within the United Nations.

Operative paragraph 4

150. Some questions were raised about the status of the note by the Secretariat (A/AC.182/2000/INF/2), pointing out that more time was required to study the paper before any decision as to the inclusion of the paragraph could be made; and also whether it could be referred to in the resolution. Some concern was also expressed regarding the distribution of the note. In addition, an inquiry was made as to whether the *Handbook on Peaceful Settlement of Disputes between States*, which was a very useful publication by the Secretariat, could be revised and republished. It was noted that any decision to revise the *Handbook* would have to be taken by the General Assembly, taking into account the financial implications.

Operative paragraph 5

151. It was suggested that the agreed language of the Declaration on Principles of International Law concerning Friendly Relations could be used in this paragraph instead. The view was expressed that third parties should also be encouraged to respect the means chosen by States parties to the dispute and should avoid interfering under the guise of mediation or offer of good offices. On the other hand, it was noted that to offer good offices or mediation was a right of third States and the making of such an offer should not be regarded as an unfriendly act by the parties to the dispute.[31]

Operative paragraph 6

152. There were no comments made in respect of operative paragraph 6.

Operative paragraph 7

153. A proposal was made to delete the reference to the two Conventions.

Operative paragraph 8

154. Some delegations proposed that the text should allude to the role of the Security Council as well as that of the Permanent Court of Arbitration. The suggestion to delete operative paragraph 8 or the eighth preambular paragraph was reiterated. The view was expressed that, instead of repeating the same language as in the preamble, the paragraph should encourage States to make the declaration under Article 36, paragraph 2, of the Statute of the International Court of Justice, recognizing as compulsory ipso facto the jurisdiction of the Court. A point was, however, made that it was not unusual for the preambular paragraph in a resolution to have a corresponding paragraph in the operative part. There were also some doubts raised about the proposal concerning the acceptance of the compulsory jurisdiction of the International Court of Justice. It was contended that it was contrary to the fundamental consensual nature of the means for settlement of disputes. It was also pointed out that the paragraph should not duplicate efforts already taken by the General Assembly, as reflected in resolutions adopted, for example, on matters relating to oceans and the law of the sea.

Paragraph 9

155. There were no comments made in respect of operative paragraph 9.

Chapter V
Proposals concerning the Trusteeship Council

156. During the general debate held at the 232nd meeting of the Special Committee, on 10 April 2000, different views were expressed as regards the future of the Trusteeship Council. While support was expressed for its abolishment, the proposal of the Secretary-General (A/52/849) to reconstitute the Council as a guardian of the common heritage of mankind was noted with interest. However, it was also pointed out that any such change in the mandate of the Council would entail a revision of the Charter of the United Nations and should be dealt with in the context of the reform of the Organization. It was also observed that the continued existence of the Council currently entailed no financial implications for the Organization.

157. The topic was taken up at the 5th meeting of the Working Group, on 12 April 2000, at which time the sponsor delegation, Malta, observed that the divergent views regarding the role of the Trusteeship Council, conveyed by the Member States to the Secretary-

General as well as expressed during the debates of the Special Committee and the Sixth Committee, remained unchanged. The three main views identified were: that the Council should be reconstituted as a trustee and guardian of the global commons and common concerns, as proposed by the sponsor delegation; that the status quo should be maintained, since the Council's historic mission had not yet been fulfilled; or that the Council should be abolished since its mandate had indeed been fulfilled. The sponsor delegation reiterated its proposal and reaffirmed that a revised Council would act in trust to safeguard the environment, protect the global commons and monitor the governance of the oceans.

158. The sponsor delegation reiterated its view that the proposal merited an in-depth consideration also because, in the view of the sponsor, it had been endorsed by the Secretary-General in the context of the reform of the United Nations, in his note entitled "A new concept of trusteeship" (A/52/849). It was also observed that it would be premature to discuss the details regarding the functioning of the proposed mechanism until an agreement was reached on the concept.

159. Different views were expressed during the subsequent debate in the Working Group. While support was expressed for the proposal, it was also observed that it would require further thought in the future since it would necessitate an amendment to the Charter, and therefore should be considered in the context of the reform of the Charter of the United Nations. In that regard, the suggestion was made that the sponsor delegation could provide delegations with the Charter amendments its proposal would entail.

160. The debate focused on a further suggestion to consider the proposal on a biennial basis, in the framework of the Special Committee. Several delegations, including the sponsor delegation, supported the suggestion. Others, however, proposed that the matter of biennializing the topic should be decided at the next session of the Special Committee, taking into account the outcome of the forthcoming Millennium Summit and Millennium Assembly of the United Nations. The possibility was then raised of biennializing the consideration of the topic as of the 2001 session of the Special Committee. However, the Working Group was advised to exercise caution in taking any decisions on the matter. A preference was also expressed for retaining the current approach of considering the proposal on an annual basis. In terms of a further suggestion, the Special Committee could recommend that the Sixth Committee, at the fifty-fifth session of the General Assembly, consider the possibility of the biennialization of the debate on the proposal, in the light of the result of the above-mentioned meetings. The proposal was also made to continue the discussion of the issue during the Working Group's consideration of the topic on the working methods of the Special Committee.

Chapter VI
Repertory of Practice of United Nations Organs and *Repertoire of the Practice of the Security Council*

161. The ongoing efforts by the Secretary-General aimed at reducing the backlog in the publication of the *Repertory of Practice of United Nations Organs* and *Repertoire of the Practice of the Security Council* were commended by some delegations. It was pointed out that both publications provided the most important information regarding the implementation of the Charter of the United Nations and the work of its organs. Some delegations were pleased to note that, following a contribution from the United Kingdom of Great Britain and Northern Ireland, a trust fund for the updating of the *Repertoire of the Practice of the Security Council* was being established, to which all Member States would be invited to contribute.

Chapter VII
Working methods of the Special Committee, identification of new subjects, assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization

A. Working methods of the Special Committee

162. During the general debate on 10 April 2000, delegations underscored the importance they attached to the Committee's efforts to improve its working methods and suggested ways to make the Special Committee a more effective and result-oriented body. Some delegations attached particular importance to the need to avoid duplication and repetition of the work of other United Nations organs and to have a cut-off mechanism to prevent the protracted discussions of topics without results. Other delegations, while agreeing that the ways of improving the working methods should be considered, were of the view that the format of the Committee's procedures should remain unchanged. One delegation expressed the view that, in addition to improving the working methods of the Committee, it would be necessary to rely upon the political will of some delegations to debate constructively some of the proposals submitted in the Committee.

163. At the 7th meeting of the Working Group, on 13 April, the delegation of Japan announced its submission of a working paper entitled "Ways and means of improving the working methods and enhancing the efficiency of the Special Committee" (A/AC.182/L.107),[32] which reads as follows:

> **"Ways and means of improving the working methods and enhancing the efficiency of the Special Committee**
>
> **"1. General principle**
>
> "The Special Committee should set a good example for other bodies of the United Nations in improving its working methods and enhancing its efficiency.
>
> **"2. Session of the Special Committee**
>
> "The Special Committee should continue its practice of holding its session, to the extent possible, later in the first half of any given year.
>
> **"3. Conference services**
>
> "The Special Committee should make best use of the allocated conference services. For that purpose, it should, *inter alia*, meet punctually and reorganize its work programme with flexibility.
>
> **"4. Submission of proposals**
>
> "(a) Delegations wishing to submit a proposal are encouraged to do so at least one month in advance and in the form of an action-oriented text;
>
> "(b) Delegations wishing to submit a proposal should bear in mind the need for the Special Committee to avoid duplication and repetition of the discussions of other forums.
>
> **"5. Consideration of proposals**
>
> "(a) The Special Committee should set clear priorities in the consideration of proposals;
>
> "(b) Delegations that submitted a proposal are encouraged, after holding a fairly comprehensive exchange of views on the topic within the Special Committee, to ask the Committee to decide whether it intends to continue the discussion on the topic, taking into consideration that usefulness of the discussions and the possibility of reaching a definitive result in the future.
>
> **"6. Duration of the Special Committee**
>
> "At the end of each session, the Special Committee should undertake a review to determine whether the duration of that session was appropriate.
>
> **"7. Preparation and adoption of the report**
>
> "The Special Committee should prepare and adopt its report to the General Assembly in the same manner as the Ad Hoc Committee

established by General Assembly resolution 51/210.

"8. Medium- and long-term programme

"The Special Committee should elaborate a medium- and long-term programme of the Committee.

"9. New proposal

"When a new proposal is to be introduced, the Special Committee should conduct a preliminary evaluation of its necessity and appropriateness.

"10. Periodic review

"The Special Committee should review the ways and means of improving its working methods and enhancing its efficiency every year."

164. In introducing the working paper, the sponsor delegation recalled General Assembly resolution 54/106 of 9 December 1999, in which the Assembly had requested the Special Committee to consider ways and means of improving its working methods on a priority basis. The main purpose of the working paper was to assist the Special Committee in this endeavour. The proposal was considered by the Working Group at its 8th and 9th meetings, on 14 April, and at its 10th meeting, on 17 April.

165. Some delegations expressed general support for the working paper and described it as timely and consistent with many suggestions that had previously been made. However, other delegations expressed their doubts with regard to the utility of the working paper. Doubts were also expressed that, in improving its working methods, the aim of the Special Committee should be to set a good example for other subsidiary bodies of the Organization, since the latter were entitled to arrange their own working methods. Moreover, in accordance with General Assembly resolution 45/45 of 28 November 1990, which approved the conclusions elaborated by the Special Committee in 1990, all subsidiary organs are urged to seek constantly to improve their procedures and methods of work. It was pointed out that one of those conclusions also reflected the idea of "biennialization" in stating that the agenda of the General Assembly should be simplified by, *inter alia*, setting an interval of more than a year between the discussions on each particular item. It was suggested that the working paper be more closely aligned with these conclusions. Mention was also made of the report of the Secretary-General on the forthcoming Millennium Assembly,[33] which contained a reference to time limits or "sunset provisions".

166. Some delegations felt that, after a paragraph-by-paragraph consideration in the Working Group, the working paper should be considered at informal consultations with a view to transforming it into an action-oriented document either for a decision of the Special Committee concerning its working methods or for approval by the General Assembly, containing a set of recommendations for all United Nations bodies. Other delegations expressed a strong preference for the working paper to be considered by the Working Group itself, as it seemed to them premature to discuss it in informal consultations, which were used, as a rule, for consideration of draft decisions or draft recommendations for approval by the General Assembly. In this connection, doubts were expressed that the working paper, in its current form, was not one which required any action to be taken by the General Assembly. Caution was also expressed that efforts to improve the working methods of the Special Committee should not have a negative impact on the Committee's consideration of the various proposals on its agenda.

167. With regard to the content of the working paper, a number of suggestions were made, which, among others, included preparing a short preamble, merging or deleting certain paragraphs and adding, at the end of paragraph 5 (b), the phrase reading "... when the Committee decides that the continuation of the discussion on such proposals is not appropriate, the concerned delegations should be encouraged to withdraw it". At the 8th meeting, the Working Group proceeded to conduct a preliminary exchange of views of the working paper on a paragraph-by-paragraph basis.

Paragraph 1. General principle

168. Some delegations, reiterating their doubts as to whether it was justifiable for the Committee to be a model for other bodies of the United Nations, suggested the deletion of the paragraph.

169. Other delegations found the drafting of the general principle not clear and proposed that the

reference to other bodies be removed from the text. It was also proposed that the paragraph, in pertinent part, be modified to read either "The Special Committee should seek to improve its working methods ..." or "The Special Committee should strive consistently to improve its working methods ...". Yet another view was expressed that the idea of setting a good example was not a general principle, but rather a goal and that, as such, it could be reflected in the final document.

170. In the discussion that ensued, the nature and the form of the future document was addressed. It was observed that the resultant document may take the form of a decision to be adopted by the Special Committee. Another view was expressed that, in accordance with its mandate under paragraph 3 (e) of resolution 54/106, the Special Committee should prepare a document which could take the shape of a decision for approval by the General Assembly. A general preference was expressed that the current discussion should focus on a paragraph-by-paragraph review of the working paper rather than on the format of the future document, which should be addressed at a later stage.

171. The sponsor delegation observed that paragraph 1 was intended to be part of a recommendation or decision of the Special Committee. Indeed, the form of the document could be discussed at a later stage. However, he pointed out that the format of decisions and recommendations differed.

Paragraph 2. Session of the Special Committee

172. In introducing paragraph 2, the sponsor delegation recalled that in the past many problems had been experienced in the context of discussions on relevant draft General Assembly resolutions concerning the timing of the sessions of the Special Committee. The purpose of the proposed provision was to establish the pattern of holding sessions in the spring.

173. Some delegations underscored widespread agreement in the Committee that its sessions should be held in the first half of any given year. Recalling that the Special Committee, in 1998, had already recommended to the General Assembly that its future sessions should be, to the extent possible, scheduled later in the first half of any given year, the view was expressed that it was not advisable to reiterate this recommendation once again in the present document.

Paragraph 3. Conference services

174. Some delegations, while noting with appreciation the significant improvement in the utilization by the Special Committee of its allocated conference resources, expressed the view that, under paragraph 7 of annex VII of the Rules of Procedure of the General Assembly,[34] the requirements to fully utilize allocated conference services and to meet punctually were required of all United Nations bodies, not only of the Special Committee. The deletion of the paragraph was therefore suggested. Other delegations supported the thrust of the paragraph and felt that it should be retained in the text, irrespective of the future form of the document.

Paragraph 4. Submission of proposals

175. In introducing paragraph 4, the sponsor delegation indicated that subparagraph (a) reflected one of the ideas found in paragraph 139 of the Committee's 1999 report,[35] which encouraged delegations to submit their proposals at least one month in advance and in the form of an action-oriented text. Subparagraph (b) was intended to respond to concerns voiced by many delegations concerning duplication and repetition of discussions in other forums.

176. Some delegations observed that the proposed strict time limit of "at least one month in advance" for submission of proposals was not consistent with the Rules of Procedure of the General Assembly, which the Special Committee was mandated to follow. Other delegations supported the proposed formula as a useful reminder and indicated that it should be construed as a general encouragement.

177. Concerning subparagraph 4 (b), several delegations maintained that the Special Committee on the Charter, as an expert legal body, was mandated to deal with the legal aspects and elements of issues which might also be on the agenda of certain other bodies and that its work in this respect was complementary and not duplicative. In their opinion, subparagraph 4 (b) was drafted too rigidly, purporting to establish a restricting rule. Conversely, other delegations were of the view that the proposed provisions were drafted as a sensible general encouragement, in line with paragraph 28 of annex V of the Rules of Procedure of the General Assembly and paragraph 8 of the annex to resolution 45/45. They, therefore, called for the retention of subparagraph 4 (b). In terms of specific modifications, it was suggested

that the word "need" be replaced by "importance" or "desirability". In addition, the qualifying expression "as far as possible" and the word "unnecessary" could be inserted after the words "should" and "avoid", respectively. It was also suggested that subparagraph 4 (b) be combined with paragraph 9.

178. In commenting on the debate, the sponsor delegation remarked, with respect to subparagraph 4 (a), that while the one month time limit for submission of proposals was to be construed as an encouragement, it could be substituted by the formula "as far in advance as possible". The need to avoid duplication should be understood as a general guideline as well. The sponsor noted the specific drafting proposals as possible compromise solutions and the insertion of the word "unnecessary" was also agreeable to him.

Paragraph 5. Consideration of proposals

179. In introducing paragraph 5, the sponsor delegation observed that subparagraph (a) would call upon the Special Committee to set clear priorities in the consideration of various proposals in order to have focused discussions thereon. As to subparagraph (b), the sponsor delegation recalled the withdrawal of its proposal by Guatemala at the 1999 session of the Special Committee and stressed that the thrust of the provision was to encourage, not to require, delegations to consider acting in a similar fashion.

180. Regarding subparagraph 5 (a), some delegations described it as timely, useful and realistic. It was suggested that the Special Committee should select, at a given session, one to three priority topics for consideration in a focused and result-oriented manner. Other delegations were of the view that subparagraph 5 (a) was drafted in terms that were too categorical and, furthermore, was stating the obvious because the General Assembly, in its resolutions pertaining to the work of the Special Committee, was already establishing such priorities. Accordingly, they preferred to delete subparagraph 5 (a).

181. As regards subparagraph 5 (b), it was observed that the procedure suggested therein required careful consideration, especially because the mechanism for withdrawal of proposals was not clear enough. Concerns were expressed that the proposed provision might impinge on the right of Member States to submit proposals under the Rules of Procedure of the General Assembly. It was considered that the Special Committee should not adopt such a restrictive procedure as currently proposed.

182. A proposal was advanced that the paragraph be complemented by a new subparagraph (c) reading: "Biennialization of consideration of proposals and other standard efficiency-enhancing tools should be utilized by the Special Committee as appropriate". Some delegations expressed support for the proposal as being consistent with the annex to General Assembly resolution 45/45. They recalled that the Sixth Committee already considered several items on a biannual basis and called upon the Special Committee to follow this practice. To some other delegations, the new proposal was unacceptable. Others indicated that they needed more time for a thorough consideration thereof. In response to requests to clarify the expression "standard efficiency-enhancing tools", it was observed that the scope of such tools could include voluntary withdrawals of proposals and consideration thereof on a biannual or longer-term basis.

183. The sponsor delegation, responding to the above comments, stated that the Committee might identify one to three priority topics for consideration at any given session. Regarding comments on the mechanism for withdrawal of proposals, the sponsor delegation referred again to Guatemala's example and pointed out that the proposed provision was meant to confirm the right of delegations to ask the Special Committee whether it wished to continue the consideration of their proposals. As to the new subparagraph (c), it was agreeable to the sponsor delegation.

Paragraph 6. Duration of the Special Committee

184. Some delegations supported the paragraph, stressing that it would allow the Special Committee to decide at the end of each session whether the same duration would be appropriate for the next session. Other delegations were of the opinion that the paragraph should be deleted as the question of the duration of the sessions of the Special Committee was a matter to be decided by the General Assembly.

185. A proposal was made to combine paragraph 6 and paragraph 10 (Periodic review) with changes so that it would read as follows: "At the end of each session, and with a view towards making any necessary adjustments, the Special Committee should undertake a review to determine whether the duration of that

session was appropriate and whether the Special Committee's next session would more appropriately be held the following year or the year thereafter. The Special Committee should also review other ways and means of improving its working methods and enhancing its efficiency". Reservations were expressed on this proposal. Some delegations emphasized that the Special Committee had a number of important matters on its agenda and thus needed to hold sessions every year. It was also stressed that the duration of the sessions should not be shortened but rather lengthened. Other delegations expressed reservations on the last sentence of the proposal, noting that it would not be appropriate to consider the ways and means of improving the working methods of the Special Committee at every session.

Paragraph 7. Preparation and adoption of the report

186. Some delegations considered that there was a need to streamline the procedure for the adoption of the report and supported the paragraph. Other delegations were of the opinion that it would not be appropriate to follow the same procedure as that adopted by the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, that is, of a short procedural report with an informal summary of the discussions on the substantive issues. Those delegations considered that the procedure adopted to date by the Special Committee of producing a report reflecting the substantive debate should be retained, and called for the deletion of the proposal.

187. The view was expressed that, as the principle behind the proposal was a good one, the proposal should be redrafted. The suggestion was also made that one way of improving the efficiency of the adoption of the report would be for the Secretariat to prepare the report in parts and to distribute them to delegations as and when ready.

188. Guidelines were proposed to assist the Chairman with the adoption of the report at the present session: delegations should not reopen the discussion on substantive topics; delegations should prepare in writing any amendments to the report when they feel their views have not been correctly reflected; if other delegations consider that amendments to the report would result in an imbalance, these delegations should also reflect this in writing. The view was expressed that the Chairman should be given the task of deciding whether or not to include any suggested amendments to the report. The suggestion was made to include an addendum to the report that would reflect the views of delegations on the report.

Paragraph 8. Medium- and long-term programme

189. In introducing paragraph 8, the sponsor delegation clarified that the Special Committee was not supposed to make a final decision on a medium- and long-term programme, but to make a recommendation to the General Assembly to that effect.

190. Some delegations favoured the proposal to elaborate a medium- and long-term programme. Others queried the language of the proposal. It was explained by the Secretary of the Special Committee that the Committee might not be in a position to elaborate such a programme as its mandate was renewed yearly.

Paragraph 9. New proposals

191. In introducing paragraph 9, the sponsor delegation suggested that, in order to avoid confusion with paragraph 4, the title should be amended to read: "Proposals on new topics".

192. Some delegations considered that the paragraph infringed on the sovereignty of States and should therefore be deleted or redrafted. Other delegations supported the paragraph, subject to the deletion of the words "to be".

Paragraph 10. Periodic review

193. Some delegations supported the proposal to periodically review the ways and means of improving the working methods of the Committee, but emphasized that that should not be undertaken every year.

194. The debate on the proposal was concluded.

195. At the 11th meeting of the Working Group, on 18 April 2000, a proposal CA/AC.182(L.108) for a draft paragraph to be inserted in the report of the Special Committee was submitted by the delegation of Japan. The proposal was not discussed by the Working Group. One delegation, however, made a preliminary observation that the first sentence of paragraph 6 should be deleted, since the Special Committee was not a standing body. The proposal read as follows:

"Paragraph 32

"In response to the request made in accordance with paragraph 3 (e) of General Assembly resolution 54/106 of 9 December 1999, the Special Committee identified the following measures to improve its working methods and enhance its efficiency:

"(a) The Special Committee will continue to strive to make the best use of allocated conference services. For that purpose, it will, *inter alia*, continue to meet punctually and reorganize its work programme with flexibility;

"(b) Delegations wishing to submit a proposal are encouraged to do so as far in advance as possible and in the form of an action-oriented text;

"(c) Delegations wishing to submit a proposal should bear in mind the importance for the Special Committee of avoiding unnecessary duplication and repetition of discussions in other forums;

"(d) When a proposal on a new topic is introduced, the Special Committee should conduct a preliminary evaluation as to its necessity and appropriateness;

"(e) Without prejudice to the right of delegations to request that specific items be discussed in the Special Committee, delegations submitting a proposal are encouraged, after holding a fairly comprehensive exchange of views on the item within the Special Committee, to ask the Committee to decide whether it intends to continue the discussion on the item, taking into consideration its usefulness and the possibility of reaching a definitive result in the future;

"(f) The Special Committee should consider, where appropriate, the question of the duration of the next session with a view to making an appropriate recommendation to the General Assembly. The Special Committee should continue to periodically review other ways and means of improving its working methods and enhancing its efficiency, including biennialization of the consideration of proposals as well as ways and means of improving the procedure for the adoption of its report."

B. Identification of new subjects[36]

196. During the general debate at the 232nd meeting of the Special Committee, on 10 April, some delegations expressed the view that the Special Committee should elaborate guidelines on, *inter alia*, the procedure for submitting proposals on new subjects, the time period for the submission of proposals and the format of such proposals, which should be action-oriented.

197. At the 11th meeting of the Working Group, on 18 April, one delegation suggested that the following subjects should be included in the programme of future work of the Special Committee and that they should be reflected in the report for consideration at the next session: "Basic conditions for the application of provisional measures by the Security Council in accordance with Article 40 of the Charter of the United Nations"; "Elaboration of the definition of the notion of the 'threat to international peace and security'"; and "Legal means of avoiding the negative consequences related to globalization". An opposing view considered that since the item of the identification of new subjects had not been discussed at the current session it should not be mentioned in the report. The point was made that the report should nevertheless reflect the fact that the item could not be considered owing to lack of time. The view was also expressed that the fact that the Working Group was unable to discuss this item underscored the need to allocate more time for the consideration of items on the agenda of the Special Committee.

C. Assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization

198. During the general debate on 10 April, some delegations reiterated their support for close contact between the Special Committee and other bodies of the Organization dealing with various practical aspects of the issues before the Committee, including by holding joint meetings[37] and exchanging information. In their view, such contact would promote a mutually complementary way of carrying out activities under the respective mandates of the bodies concerned and would

help to avoid duplication of work. A suggestion was made that the Special Committee should submit a recommendation to the General Assembly encouraging informal contacts between the Special Committee and other relevant organs and inviting the representatives of such bodies and relevant units of the Secretariat to brief the Special Committee on their activities.

Notes

[1] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33* (A/36/33), para. 7.

[2] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 45.

[3] Ibid., *Fifty-second Session, Supplement No. 33* and corrigendum (A/52/33 and Corr.1), para. 58.

[4] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 73.

[5] Ibid., para. 84.

[6] Ibid., para. 98.

[7] Ibid., *Fifty-fourth Session, Supplement No. 33* and corrigendum (A/54/33 and Corr.1), para. 101.

[8] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 105.

[9] Ibid., *Fifty-fourth Session, Supplement No. 33* and corrigendum (A/54/33 and Corr.1), para. 107.

[10] A/54/2000, paras. 229-233 and 365.

[11] See *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), para. 45.

[12] Ibid., *Fifty-fourth Session, Supplement No. 33* and corrigendum (A/54/33 and Corr.1).

[13] See the note by the President of the Security Council dated 29 January 1999 (S/1999/92), as well as the subsequent practice of the sanctions committees established by the Council, in particular the report of the Panel of Experts on violations of Security Council sanctions against the União Nacional para a Independência Total de Angola (UNITA) (S/2000/203, annex).

[14] A/54/2000, para. 229.

[15] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, General Assembly resolution 2625 (XXV), annex.

[16] E/C.12/1997/8; see also *Official Records of the Economic and Social Council, 1998, Supplement No. 2* (E/1998/22), annex V.

[17] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), para. 73.

[18] General Assembly resolution 50/227 of 24 May 1996.

[19] The Joint Working Group was established in 1967. See *Official Records of the General Assembly, Twenty-second Session*, Annexes, Agenda item 60, document A/6813.

[20] *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 33* (A/47/33); ibid., *Forty-eighth Session, Supplement No. 33* (A/48/33); ibid., *orty-ninth Session, Supplement No. 33* (A/49/33); ibid., *Fifty-second Session, Supplement No. 33* and corrigendum (A/52/33 and Corr.1); ibid., *Fifty-third Session, Supplement No. 33* (A/53/33).

[21] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 84.

[22] Ibid., para. 98.

[23] Ibid., *Fifty-fourth Session, Supplement No. 33* and corrigendum (A/54/33), para. 101.

[24] Available at <http://www.un.int/russia>.

[25] For the revised text, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), para. 105.

[26] Ibid., *Fifty-fourth Session, Supplement No. 33* and corrigendum (A/54/33 and Corr.1), para. 107.

[27] Ibid., *Supplement No. 33* and corrigendum (A/54/33 and Corr.1).

[28] Annex to the Vienna Convention on the Law of Treaties and annexes V and VII to the United Nations Convention on the Law of the Sea.

[29] The information paper was issued as a note by the Secretariat (A/AC.182/2000/INF/2).

[30] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 33* (A/52/33), para. 75; see para. 12 of the proposal therein.

[31] Article 3 of the Convention for the Pacific Settlement of International Disputes, 1899, and article 3 of the 1907 Convention.

[32] Previously issued as A/AC.182/2000/CRP.1.

[33] A/54/2000, para. 357.

[34] Annex VII reproduced the conclusions prepared by the Special Committee in 1984 on the matter and approved by the General Assembly in resolution 39/88.

[35] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 33* and corrigendum (A/54/33 and Corr.1).

[36] For the summary of the discussion in the Working Group relevant to this item, see chapter VII of the draft report (A/AC.182/2000/CRP.10, paras. 15, 16, 18, 29 and 30).

[37] For the summary of the discussion of this issue in the Working Group, see chapter III, section C, of the draft report (A/AC.182/2000/CRP.4, paras. 1, 3, 8, 10-12, and A/AC.182/2000/CRP.4/Add.1, paras. 13 and 14).

00-44244 (E) 290600